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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PATRICK MARANDA, ROBERT
EWING, TERRI SUE HOLLIDAY,
and ALMA JONES, individually, and
on behalf of a class of similarly
situated individuals,

Plaintiffs,

v.

HYUNDAI MOTOR AMERICA.,
INC., a California corporation, KIA
MOTORS AMERICA, INC., a
California corporation, HYUNDAI
MOTOR COMPANY, a South
Korean corporation, and KIA
MOTORS CORPORATION, a South
Korean corporation,

Defendants.

Case No.: 8:22-cv-02193-JVS-JDE
Assigned to Hon. James V. Selna

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Breach of Express Warranty under Illinois Law
- (2) Breach of Implied Warranty under Illinois law
- (3) Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act
- (4) Breach of Express Warranty under Maryland Law
- (5) Breach of Implied Warranty under Maryland law
- (6) Violations of the Maryland Consumer Protection Act
- (7) Violations of the Minnesota Prevention of Consumer Fraud Act

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- (8) Violations of the Minnesota Deceptive Trade Practices Act
- (9) Violations of the Minnesota False Statement in Advertising Act
- (10) Breach of Express Warranty under Minnesota Law
- (11) Breach of Implied Warranty under Minnesota law
- (12) Violations of the South Carolina Unfair Trade Practices Act
- (13) Breach of Express Warranty under South Carolina Law
- (14) Breach of Implied Warranty under South Carolina Law
- (15) Breach of Express Warranty under the Magnuson-Moss Warranty Act
- (16) Breach of Implied Warranty under the Magnuson-Moss Warranty Act
- (17) Fraudulent Concealment/Omission
- (18) Unjust Enrichment

DEMAND FOR JURY TRIAL

1 6. The Headlight Defect presents a significant safety hazard. Drivers,
2 including Plaintiffs, are unable to see at a distance in front of them, are unable to
3 see in inclement weather and while driving at night, and are unable to see
4 potential road hazards, including people, animals, and objects. The Headlight
5 Defect endangers drivers, pedestrians, and other vehicles because it makes
6 accidents wherein the vehicle strikes a person, animal, or object in the roadway
7 more likely, and sometimes entirely unavoidable, depending on the degradation
8 of light output or level of headlight failure. For this reason, Class members have
9 reported fear of driving their Class Vehicles at night or in inclement weather.

10 7. Defendants sold the Class Vehicles with a 6-year/60,000-mile (“Kia
11 Warranty”) or 5-year/60,000-mile (“Hyundai Warranty”) New Vehicle Limited
12 Warranty (“NVLW”) that purports to cover the headlights. However, owners and
13 lessees often have complained that their Headlights fail and require repair or
14 replacement both within and just outside the warranty period and that they are
15 charged for repair even when within the warranty period. This is evidenced
16 through Class Member reports to the National Highway Traffic Safety
17 Administration (“NHTSA”), which demonstrate that Defendants’ authorized
18 dealerships are replacing and repairing Headlights both within, and just outside,
19 the applicable express warranty periods and/or are charging Class Members for
20 repairs within the warranty period.

21 8. The Headlight Defect is inherent in each Class Vehicle and was
22 present at the time of sale.

23 9. Discovery will show that, since 2019, if not earlier, Defendants have
24 been aware the Class Vehicles’ Headlights would need frequent repair,
25 prematurely fail, require frequent replacement, including replacements just
26 outside of warranty, that the replacement Headlights installed would be equally
27 as defective as the originals, and that the Headlight would cause the symptoms of
28 the Headlight Defect described above (poor light output from the headlamp

1 assembly; sudden high beam failure; improper aiming; failed illumination ahead
2 of the vehicle, and fogged or unfocused headlights) yet HMC and KMC
3 continued to equip the Class Vehicles with defective Headlights. Further,
4 Defendants often claim that the warranties they provided with the vehicles do no
5 cover the headlight diagnosis, calibration or replacement, forcing consumers to
6 pay out of pocket. Moreover, Defendants not only refused to disclose the alleged
7 Defect to consumers, they also actively concealed, and continue to conceal, their
8 knowledge concerning the Headlight Defect.

9 10. Defendants undertook affirmative measures to conceal Headlight
10 failures and other malfunctions through, among other things, Technical Service
11 Bulletins (“TSB”) issued to authorized repair facilities only, and not provided to
12 owners or lessees.

13 11. Defendants had superior and/or exclusive knowledge of material
14 facts regarding the Headlight Defect due to their pre-production testing, design
15 failure mode analysis, aggregate part sales, consumer complaints about the
16 Defect to Defendants’ dealers, who are their agents for vehicle repairs, customer
17 complaints made directly to Kia and Hyundai, dealer audits, aggregate warranty
18 information, consumer complaints to and resulting notice from NHTSA, early
19 consumer complaints on websites and internet forums, dealership repair orders,
20 among other internal sources of information about the problem.

21 12. The Headlight Defect is material because, *inter alia*, it poses a
22 safety concern. As attested by Class Members in complaints to the National
23 Highway Traffic Safety Administration (“NHTSA”), and other online forums,
24 the Headlights can suddenly fail or dim, causing inability to perceive pedestrians,
25 animals, and other road hazards, inability to perceive and respond to safety
26 threats, and greatly increased risk of collision.

27 13. Defendants’ failure to disclose the Headlight Defect has caused
28 Plaintiffs and putative class members to lose the use of their Vehicles’

1 Headlights, the use of their vehicles at night or during inclement weather, and/or
2 incur costly repairs that have conferred an unjust substantial benefit upon
3 Defendants.

4 14. Discovery will show that, in an effort to conceal the Headlight
5 Defect, Defendants have instructed dealers to tell consumers their vehicles are
6 “operating normally” or “operating as intended” when they are not, or to give
7 excuses for sub-par performance such as the headlights not being pointed in the
8 correct direction. This is a common practice in the automotive industry. By
9 denying the existence of a defect, manufacturers can play on the consumers’ lack
10 of technical expertise and avoid implementing potentially costly fixes for years,
11 or at least until the vehicles are out of warranty. When remedial measures are
12 taken, they are often through the issuance of service bulletins provided to dealers
13 only that are narrowly crafted and underinclusive, as occurred here and set forth
14 below.

15 15. Had Defendants disclosed the Headlight Defect, Plaintiffs and Class
16 Members would not have purchased the Class Vehicles, would have paid less for
17 them, or would have required Defendants to replace, or pay for the replacement
18 of, the defective Headlights with a non-defective version before their warranty
19 periods expired.

20 THE PARTIES

21 Plaintiff Patrick Maranda

22 16. Plaintiff Maranda is a Minnesota citizen residing in Outing,
23 Minnesota.

24 17. In or around fall 2021, Plaintiff Maranda purchased a new 2022
25 Hyundai Palisade from Dondelinger Hyundai, an authorized Hyundai dealership
26 in Baxter, Minnesota.

27 18. Plaintiff Maranda purchased his vehicle primarily for personal,
28 family, or household use.

1 19. Passenger safety and reliability were important factors in Plaintiff
2 Maranda's decision to purchase his vehicle. Before making his purchase,
3 Plaintiff Maranda researched the 2022 Hyundai Palisade online, by "Googling"
4 the vehicle. At the dealership, Plaintiff Maranda also reviewed the vehicle's
5 Monroney Sticker or "window sticker," which listed official information about
6 the vehicle. Plaintiff Maranda also discussed the safety features of the vehicle
7 with dealership personnel, who made no reference to the Headlight Defect.
8 Instead, the dealership salesperson told Plaintiff Maranda the Hyundai Palisade
9 was a "very reliable vehicle." Plaintiff Maranda believed that the 2022 Hyundai
10 Palisade would be a safe and reliable vehicle.

11 20. Defendants' omissions were material to Plaintiff Maranda. Had the
12 Hyundai Defendants disclosed their knowledge of the Headlight Defect before he
13 purchased his vehicle, Plaintiff Maranda would have seen and been aware of the
14 disclosures. Furthermore, had he known of the Headlight Defect, Plaintiff
15 Maranda would not have purchased his vehicle.

16 21. Shortly after purchase, Plaintiff Maranda began experiencing
17 difficulties with his Class Vehicle's Headlights. Specifically, the Headlights do
18 not produce sufficient light on low beam and the high beam Headlights will
19 suddenly and unexpectedly go to low beam, for no ascertainable reason and
20 without an approaching vehicle. Such failures have caused Plaintiff Maranda to
21 reduce his use of the vehicle during the night and during inclement weather.
22 Plaintiff Maranda lives in a rural area that lacks ambient lighting and thus is in
23 fear of, and in danger from, unilluminated pedestrians, animals, and road hazards
24 while driving at night.

25 22. With approximately 15,000 miles on the odometer, Plaintiff
26 Maranda brought his vehicle to Dondelinger Hyundai, an authorized Hyundai
27 dealership in Baxter, Minnesota, complaining of insufficient light output and
28 sudden and unexpected low beam and high beam shutoff. Dealership personnel

1 informed Plaintiff Maranda they had not heard of any issues with the Headlights,
2 they should be “fine,” and no repairs were done.

3 23. Despite bringing his vehicle to a Hyundai dealership—Hyundai’s
4 authorized agent for repairs—Plaintiff Maranda has not received a permanent
5 repair under warranty, and his vehicle continues to exhibit the Headlight Defect.

6 24. As a result of the Headlight Defect, Plaintiff Maranda has lost
7 confidence in the ability of his Class Vehicle to provide safe and reliable
8 transportation for ordinary and advertised purposes, particularly at night and in
9 inclement weather. Further, Plaintiff Maranda will be unable to rely on the Class
10 Vehicles’ advertising or labeling in the future, and so will not purchase or lease
11 another Class Vehicle, although he would like to do so.

12 25. At all times, Plaintiff Maranda, like all Class Members, has driven
13 his vehicle in a manner both foreseeable and in which it was intended to be used.

14 **Plaintiff Robert Ewing**

15 26. Plaintiff Ewing is a South Carolina citizen residing in West Union,
16 South Carolina.

17 27. On or around July 30, 2022, Plaintiff Ewing purchased a new 2022
18 Kia Telluride from Kia of Greer, an authorized Kia dealership located in Greer,
19 South Carolina.

20 28. Plaintiff Ewing purchased his vehicle primarily for personal, family,
21 or household use.

22 29. Passenger safety and reliability were important factors in Plaintiff
23 Ewing’s decision to purchase his vehicle. Before making his purchase, Plaintiff
24 Ewing researched the 2022 Kia Telluride online, by “Googling” the vehicle. At
25 the dealership, Plaintiff Ewing also reviewed the vehicle’s Monroney Sticker or
26 “window sticker,” which listed official information about the vehicle. Plaintiff
27 Ewing also test drove the vehicle and spoke with dealership personnel, who
28 made no reference to the Headlight Defect. Plaintiff Ewing believed that the

1 2022 Kia Telluride would be a safe and reliable vehicle.

2 30. Defendant's omissions were material to Plaintiff Ewing. Had the
3 Kia Defendants disclosed their knowledge of the Headlight Defect before he
4 purchased his vehicle, Plaintiff Ewing would have seen and been aware of the
5 disclosures. Furthermore, had he known of the Headlight Defect, Plaintiff Ewing
6 would not have purchased his vehicle or would not have purchased his vehicle
7 for the price he did.

8 31. Immediately after purchase, Plaintiff Ewing began experiencing
9 difficulties with his Class Vehicle's Headlights. Specifically, the Headlights do
10 not produce sufficient light, and therefore provide an insufficient field of vision,
11 and using the high beam Headlights makes little difference in the insufficient
12 illumination. Plaintiff Ewing feels particularly unsafe due to the Headlights'
13 insufficient illumination when driving after dark because he lives in a rural area
14 and drives more slowly to compensate for the low visibility as a consequence of
15 the Defect.

16 32. As a result, on or around September 19, 2022, Plaintiff Ewing
17 contacted Kia's Customer Care department, complaining of insufficient light
18 output, including the negligible difference even when the high beams are used.
19 Despite multiple follow up requests as further detailed below, Kia has not
20 addressed his concerns or agreed to repair the issue. Despite multiple follow up
21 requests as further detailed below, Kia has not addressed his concerns or agreed
22 to repair the issue.

23 33. In early October 2022, Plaintiff Ewing raised the insufficient
24 illumination issue with Cory Powell at Kia of Greer. The following week,
25 Plaintiff Ewing also reported the insufficient light output issue to Kia of
26 Anderson, an authorized Kia dealership in Pendleton, South Carolina and made a
27 service appointment at Kia of Anderson, which is closer than Kia of Greer to
28 Plaintiff Ewing's home.

1 34. On November 8, 2022, with 1,916 miles on the odometer, Plaintiff
2 Ewing took his vehicle to Kia of Anderson. According to the service record,
3 dealership personnel made a “small adjustment” to the Headlights, informed
4 Plaintiff that “nothing else [was] needed at [the] time,” and advised Plaintiff “to
5 come back if issue continue[d].” Despite the alleged repair, Plaintiff Ewing did
6 not notice a difference in the Headlights’ insufficient illumination when driving
7 home after the service visit, which Plaintiff Ewing reported to Mr. Harbin of Kia
8 of Anderson the following day.

9 35. On November 10, 2022, Plaintiff Ewing also raised these concerns
10 with the Kia Customer Care department and spoke with a supervisor named
11 Randy, who advised Mr. Ewing to schedule yet another service appointment at
12 Kia of Anderson.

13 36. Despite bringing his vehicle to a Kia dealership, multiple telephone
14 calls, and at least six (6) email communications to Kia’s authorized dealerships
15 and Kia’s Customer Care department, Plaintiff Ewing’s vehicle continues to
16 suffer from the Defect. Indeed, because Kia and its dealer representatives have
17 failed to address Plaintiff Ewing’s concerns despite being given numerous
18 opportunities to do so, Plaintiff Ewing has not taken his vehicle for another
19 service appointment. Plaintiff Ewing avoids driving after dark because he feels
20 unsafe due to the Defect.

21 37. Indeed, because Kia and its dealer representatives have failed to
22 address Plaintiff Ewing’s concerns despite being given numerous opportunities
23 to do so, Plaintiff Ewing has not taken his vehicle for another service
24 appointment.

25 38. Despite the foregoing, Plaintiff Ewing has not received a permanent
26 repair under warranty, and his vehicle continues to exhibit the Headlight Defect.

27 39. At all times, Plaintiff Ewing, like all Class Members, has driven his
28 vehicle in a manner both foreseeable and in which it was intended to be used.

Plaintiff Terri Sue Holliday

40. Plaintiff Holliday is an Illinois citizen residing in McLean, Illinois.

41. On or around May 17, 2019, Plaintiff Holliday purchased a new 2020 Kia Telluride from O'Brien Kia, an authorized Kia dealership in Bloomington, Illinois.

42. Plaintiff Holliday purchased her vehicle primarily for personal, family, or household use.

43. Passenger safety and reliability were important factors in Plaintiff Holliday's decision to purchase her vehicle. Before making her purchase, Plaintiff Holliday researched the 2020 Kia Telluride by test driving the vehicle and discussing the vehicle's safety and reliability with the Kia dealer's salesperson, who unreservedly recommended the vehicle to Plaintiff Holliday and made no reference to the Headlight Defect. At the dealership, Plaintiff Holliday also reviewed the vehicle's Monroney Sticker or "window sticker," which listed official information about the vehicle. Plaintiff Holliday believed that the 2020 Kia Telluride would be a safe and reliable vehicle.

44. Defendants' omissions were material to Plaintiff Holliday. Had the Kia Defendants disclosed their knowledge of the Headlight Defect before she purchased her vehicle, Plaintiff Holliday would have seen and been aware of the disclosures. Furthermore, had she known of the Headlight Defect, Plaintiff Holliday would not have purchased her vehicle.

45. Within one (1) month after purchase, Plaintiff Holliday began experiencing difficulties with her Class Vehicle's Headlights. Specifically, the Headlights do not produce sufficient light and, therefore, provide an insufficient field of vision, particularly on the passenger side of the vehicle. Plaintiff Holliday feels particularly unsafe due to the Headlights' insufficient illumination when driving after dark because she lives in a rural area and drives with high beams to compensate for the low visibility as a consequence of the Defect. She is

1 particularly worried about striking a child, which nearly occurred once due to the
2 poor illumination on the passenger side of the vehicle.

3 46. Plaintiff Holliday informed O'Brien Kia about her experience with
4 the Headlight Defect within two (2) months of her purchase in 2019, but at no
5 time has the dealership addressed her concerns or agreed to repair the issue.
6 Plaintiff Holliday independently attempted to remedy the Defect by replacing the
7 bulbs, but that attempt was unsuccessful.

8 47. Despite bringing her vehicle's Headlight Defect to the Kia
9 dealership's attention—Kia's authorized agent for repairs—Plaintiff Holliday
10 has not received a permanent repair under warranty, and her vehicle continues to
11 exhibit the Headlight Defect.

12 48. As a result of the Headlight Defect, Plaintiff Holliday has lost
13 confidence in the ability of her Class Vehicle to provide safe and reliable
14 transportation for ordinary and advertised purposes, particularly at night and in
15 inclement weather. Further, Plaintiff Holliday will be unable to rely on the Class
16 Vehicles' advertising or labeling in the future, and so will not purchase or lease
17 another Class Vehicle, although she would like to do so.

18 49. At all times, Plaintiff Holliday, like all Class Members, has driven
19 her vehicle in a manner both foreseeable and in which it was intended to be used.

20 **Plaintiff Alma Jones**

21 50. Plaintiff Jones is a Virginia citizen residing in Midlothian, Virginia.

22 51. On or around July 7, 2022, Plaintiff Jones purchased a new 2022
23 Hyundai Palisade from Ourisman Hyundai, an authorized Hyundai dealership in
24 Bowie, Maryland.

25 52. Plaintiff Jones purchased her vehicle primarily for personal, family,
26 or household use.

27 53. Passenger safety and reliability were important factors in Plaintiff
28 Jones's decision to purchase her vehicle. Before making her purchase, Plaintiff

1 Jones researched the 2022 Hyundai Palisade online, by “Googling” the vehicle,
2 as well as by visiting Hyundai’s website. At the dealership, Plaintiff Jones also
3 reviewed the vehicle’s Monroney Sticker or “window sticker,” which listed
4 official information about the vehicle, and took the vehicle for a test drive.
5 Plaintiff Jones also discussed the safety features of the vehicle with dealership
6 personnel, who made no reference to the Headlight Defect. Instead, Plaintiff
7 Jones was informed the vehicle was “one of the most reliable on the market.”
8 Plaintiff Jones believed that the 2022 Hyundai Palisade would be a safe and
9 reliable vehicle.

10 54. Defendants’ omissions were material to Plaintiff Jones. Had the
11 Hyundai Defendants disclosed their knowledge of the Headlight Defect before
12 she purchased her vehicle, Plaintiff Jones would have seen and been aware of the
13 disclosures. Furthermore, had she known of the Headlight Defect, Plaintiff Jones
14 would not have purchased her vehicle.

15 55. Immediately after purchase, Plaintiff Jones began experiencing
16 difficulties with her Class Vehicle’s Headlights. Specifically, the Headlights do
17 not produce sufficient light on low beam and Plaintiff is unable to see objects in
18 her vehicle’s path clearly at night and in inclement weather.

19 56. With approximately 7,500 miles on the odometer, Plaintiff Jones
20 brought her vehicle to Pearson Hyundai, an authorized Hyundai dealership in
21 Midlothian, Virginia, and complained of insufficient light and her resulting
22 safety concerns. Dealership personnel informed Plaintiff Jones that’s “just how
23 the lights are set” and no repairs were done.

24 57. Despite bringing her vehicle to a Hyundai dealership—Hyundai’s
25 authorized agent for repairs—Plaintiff Jones has not received a permanent repair
26 under warranty, and her vehicle continues to exhibit the Headlight Defect.

27 58. As a result of the Headlight Defect, Plaintiff Jones has lost
28 confidence in the ability of her Class Vehicle to provide safe and reliable

1 transportation for ordinary and advertised purposes, particularly at night and in
2 inclement weather. Further, Plaintiff Jones will be unable to rely on the Class
3 Vehicles' advertising or labeling in the future, and so will not purchase or lease
4 another Class Vehicle, although she would like to do so.

5 59. At all times, Plaintiff Jones, like all Class Members, has driven her
6 vehicle in a manner both foreseeable and in which it was intended to be used.

7 **Defendant Hyundai Motor America, Inc.**

8 60. Defendant Hyundai Motor America, Inc. is a corporation organized
9 and in existence under the laws of the State of California and registered to do
10 business in the State of California. HMA is headquartered in Fountain Valley,
11 California and is a wholly owned subsidiary of HMC.

12 61. HMA is responsible for sales, marketing, service, distribution,
13 import and export of Hyundai branded products, including vehicles and parts, in
14 the United States. HMA is also the warrantor and distributor of Hyundai
15 vehicles, including the Class Vehicles, throughout the United States.

16 62. In order to sell vehicles to the general public, HMA enters into
17 agreements with authorized dealerships who engage in retail sales with
18 consumers such as Plaintiffs. In return for the exclusive right to sell new
19 Hyundai branded vehicles, authorized dealerships are also permitted to service
20 and repair these vehicles under the warranties HMA provides directly to
21 consumers who purchased new vehicles from the authorized dealerships. All
22 service and repair at an authorized dealership is completed according to HMA
23 instructions, issued through service manuals, TSBs, and other documents, written
24 in conjunction with HMC. Per the agreements between HMA and the authorized
25 dealers, consumers are able to receive services under HMA's issued warranty at
26 dealer locations that are convenient to them. These agreements provide HMA
27 with a significant amount of control over the actions of the authorized
28 dealerships. For example, HMA employees are appointed as managers for

1 particular regions of the United States and their responsibilities include
2 managing the day-to-day operations of the dealerships located within their
3 regions.¹

4 63. Discovery will show that HMA also developed and disseminated the
5 owner's manual and warranty booklets, advertisements, and other promotional
6 material relating to the Hyundai Class Vehicles in conjunction with HMC.

7 HMA is also HMC's designated liaison to fulfill its motor vehicles safety
8 monitoring duties under federal law in the United States. As such, HMA
9 communicates with NHTSA on HMC's behalf and holds itself out to be the
10 manufacturer of Hyundai-branded vehicles in those communications such as
11 safety reports and recalls. Specifically, HMA maintains a department within
12 itself called the North American Safety Office ("NASO"), whose primary
13 responsibility is monitoring Hyundai-branded vehicles for defects and
14 communicating with affiliated companies regarding the existence, remedies, and
15 communication to the public about those safety defects. NASO reviews reports
16 from the field, including Speak Up for Safety ("SUFS") reports and maintains a
17 Data Analysis team, a Data Review Committee, and a Technical Review
18 Committee as part of its mandate. NASO works with the Hyundai America
19 Technical Center (with which it has established the Safety Test and Investigation
20 Laboratory), HMC, and Hyundai Auto Canada Corporation when investigating
21 defects and drafting materials related to those defects. It also works with KMA
22 and KMC, as well as other Kia affiliated companies, when the components
23 involved are also installed in Kia-branded vehicles.

24 **Defendant Hyundai Motor Company**

25 64. Defendant Hyundai Motor Company is a corporation founded in

26 ¹ See, e.g., <https://www.hyundainews.com/en-us/releases/2135> ("Hyundai Motor America
27 named Kimberly Walker General Manager of the Western Region, effective March 1, 2016. In
28 her new role, Walker will lead the day-to-day operations of more than 165 Hyundai
dealerships across the 12 Western-most states in the United States.").

1 1967 under the laws of South Korea and headquartered in Seoul, South Korea.

2 65. HMC designs, engineers, manufactures, tests, markets, supplies,
3 sells, and distributes Hyundai-branded vehicles and parts for those vehicles
4 worldwide, including the United States, as well as manufactures parts for Kia-
5 branded vehicles. HMC also receives parts manufactured by KMC for use in
6 Hyundai-branded vehicles.

7 66. HMC is the parent corporation of HMA, as well as the United States
8 based Hyundai facilities, including manufacturing in Alabama and the technical
9 campus in Michigan. For all its United States subsidiaries, including HMA,
10 HMC provides all the technical information for the purposes of manufacturing,
11 servicing, and repairing the Class Vehicles

12 67. Discovery will show the decision to found HMA in California and
13 register it as a California corporation was made by HMC.

14 68. HMC provides all technical information to HMA for use its in
15 operations and works in conjunction with HMC to draft technical materials,
16 including submissions to NHTSA, bulletins, technical service manuals, and
17 recall information. HMC also works in conjunction and has final approval of all
18 marketing materials produced by HMA as part of its work in monitoring and
19 control the global Hyundai brand.

20 69. Discovery will show that the relationship between HMA and
21 HMC is governed by an agreement that gives HMC the right to control nearly
22 every aspect of HMA's operations—including sales, marketing, management
23 policies, technical information, servicing instructions, governance policies,
24 pricing, and warranty terms. Furthermore, HMC exercises control over the
25 executives in charge of HMA, including appointing the President and CEO of
26 HMA, José Muñoz. In addition to this role, Mr. Muñoz is also the Global Chief
27
28

1 Operating Office of HMC.²

2 **Defendant Kia Motors America, Inc.**

3 70. Defendant Kia Motors America, Inc. d/b/a Kia America Inc. is a
4 corporation organized and in existence under the laws of the State of California
5 and registered to do business in the State of California. KMA is headquartered in
6 Irvine, California and is a wholly owned subsidiary of KMC.

7 71. KMA is responsible for sales, marketing, service, distribution,
8 import and export of Kia branded products, including vehicles and parts, in the
9 United States. KMA is also the warrantor and distributor of Kia vehicles,
10 including the Class Vehicles, throughout the United States.

11 72. In order to sell vehicles to the general public, KMA enters into
12 agreements with authorized dealerships who engage in retail sales with
13 consumers such as Plaintiffs. In return for the exclusive right to sell new Kia
14 branded vehicles, authorized dealerships are also permitted to service and repair
15 these vehicles under the warranties KMA provides directly to consumers who
16 purchased new vehicles from the authorized dealerships. All service and repair at
17 an authorized dealership is completed according to KMA instructions, issued
18 through service manuals, TSBs and other documents, written in conjunction with
19 KMC. Per the agreements between KMA and the authorized dealers, consumers
20 such as Plaintiffs are able to receive services under KMA's issued warranty at
21 dealer locations that are convenient to them. These agreements provide KMA
22 with a significant amount of control over the actions of the authorized
23 dealerships. As with HMA, KMA also employs region managers whose
24 responsibilities include managing the dealers within their region, including
25 marketing and customer satisfaction initiatives.

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27 ² See <https://www.hyundai-news.com/en-us/bios/jose-munoz> (last accessed November
28 10, 2022).

1 73. Discovery will show that KMA also developed and disseminated the
2 owner's manual and warranty booklets, advertisements, and other promotional
3 material relating to the Kia Class Vehicles.

4 74. KMA is also KMC's designated liaison to fulfill its motor vehicles
5 safety monitoring duties under federal law in the United States. As such, KMA
6 communicates with NHTSA on KMC's behalf and holds itself out to be the
7 manufacturer of Kia-branded vehicles in those communications such as safety
8 reports and recalls. KMA is part of "Kia North America," working in
9 conjunction with other KMC subsidiaries to monitor safety issues in Kia-branded
10 products in North America. Kia North America includes manufacturing facilities
11 in Georgia and Mexico, the Kia Design Center America in California, and
12 various research and development facilities in the United States including the
13 Kia Design Center in Irvine, California, which is a part of the Hyundai America
14 Technical Center Incorporated. It also works with HMA and HMC, as well as
15 other Hyundai affiliated companies, when the components involved are also
16 installed in Hyundai-branded vehicles.

17 **Defendant Kia Motor Company**

18 75. Defendant Kia Motor Company is a corporation founded in 1944
19 under the laws of South Korea and headquartered in Seoul, South Korea.

20 76. KMC designs, engineers, manufactures, tests, markets, supplies,
21 sells, and distributes Kia-branded vehicles and parts for those vehicles
22 worldwide, including the United States. One of KMC's major suppliers for parts
23 is HMC. In turn, KMC is also a major supplier to HMC of parts to be used
24 Hyundai-branded vehicles.

25 77. KMC is the parent corporation of KMA, as well as the United States
26 based Kia facilities, including manufacturing in Georgia. For all its United States
27 subsidiaries, including KMA, KMC provides all the technical information for the
28 purposes of manufacturing, servicing, and repairing the Class Vehicles.

1 78. Discovery will show that the decision to found KMA in California
2 and register it as a California corporation was made by KMC.

3 79. KMC provides all technical information to KMA for use its in
4 operations and works in conjunction with KMC to draft technical materials,
5 including submissions to NHTSA, bulletins, technical service manuals, and
6 recall information. KMC also works in conjunction and has final approval of all
7 marketing materials produced by KMA as part of its work in monitoring and
8 control the global Kia brand.

9 80. Discovery will show that the relationship between KMA and KMC
10 is governed by an agreement that gives KMC the right to control nearly every
11 aspect of KMA's operations—including sales, marketing, management policies,
12 technical information, servicing instructions, governance policies, pricing, and
13 warranty terms.

14 81. Defendants, through their various entities, design, manufacture,
15 market, distribute, service, repair, sell, and lease passenger vehicles, including
16 the Class Vehicles, nationwide and in Minnesota and South Carolina.

17 82. Defendants HMC and KMC worked together to develop, design,
18 manufacture, test, and draft technical materials for the Class Vehicles and the
19 Gamma engines. In fact, HMC and KMC are controlled by the same parent,
20 Hyundai Motor Group, and the chairman of the board of both companies is Eui-
21 sun Chung. HMC and KMC have joint research and development facilities,
22 specifically in Korea, and consult with each other on all technical matters.

23 83. Defendants worked together on the drafting and distribution of all
24 advertising materials and technical bulletins regarding the Class Vehicles to
25 authorized dealers, as well as in training Hyundai and Kia-dealer technicians in
26 the correct procedures to maintain, service, and repair Hyundai and Kia vehicles.

27 84. At all relevant times, Defendants were and are engaged in the
28 business of designing, manufacturing, constructing, assembling, marketing,

1 distributing, and selling automobiles and motor vehicle components in
2 Minnesota, South Carolina, and throughout the United States of America.

3 **JURISDICTION**

4 85. This is a class action.

5 86. Members of the proposed Class number more than 100 and at least
6 one plaintiff and one defendant are citizens of different states.

7 87. There are at least 100 members in the proposed class, and the
8 aggregate claims of individual Class Members exceed \$5,000,000.00 in value,
9 exclusive of interest and costs.

10 88. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

11 89. This Court has personal jurisdiction over Plaintiffs because
12 Plaintiffs submit to this Court's jurisdiction. This Court has personal jurisdiction
13 over Defendants because KMA and HMA are incorporated in this District; KMC
14 and HMC conduct substantial business in this District through KMA and HMA,
15 respectively; and discovery will show that significant conduct involving
16 Defendants giving rise to the Complaint took place in this District.

17 **VENUE**

18 90. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
19 the conduct giving rise to this lawsuit occurred here, KMA and HMA are
20 deemed to reside in this district pursuant to 28 U.S.C. § 1391(a), and KMA and
21 HMA are incorporated here, and Defendants are subject to personal jurisdiction
22 here by conducting business within the State of California.

23 **FACTUAL ALLEGATIONS**

24 91. Defendants designed, manufactured, distributed, marketed, sold,
25 and/or leased the Class Vehicles. Defendants sold, directly or indirectly, through
26 dealers and other retail outlets, thousands of Class Vehicles in California and
27 nationwide. Defendants warrant and service the Class Vehicles through their
28 nationwide network of authorized dealers and service providers.

1 92. Defendants provided all purchasers or lessees of the Class Vehicles
2 with a New Vehicle Limited Warranty (“NVLW”). The terms of these warranties
3 are non-negotiable and Defendants exercise sole authority in determining
4 whether and to what extent a particular repair is covered under the warranties
5 they offers.

6 93. The NVLW provided by KMA includes basic warranty coverage
7 and Power Train coverage, stated in relevant part:

8 **Basic Warranty Coverage**

9 Except as limited or excluded below, all components of your new
10 Kia Vehicle are covered for 60 months/60,000 miles from the Date
11 of First Service, whichever comes first (Basic Limited Warranty
12 Coverage). This Warranty does not cover wear and maintenance
13 items, or those items excluded elsewhere in the Manual.

14 **Power Train Coverage**

15 For Original Owners (defined below), the Power Train Limited
16 Warranty begins upon expiration of the 60 month/60,000 mile Basic
17 Limited Warranty Coverage, and will continue to cover the
18 following components up to 120 months or 100,000 miles from the
19 Date of First Service, whichever comes first. It does not cover
20 normal wear and tear, maintenance, or those items excluded
21 elsewhere in this manual.

22 **To Get Warranty Service**

23 You must take your Kia Vehicle, along with this manual, to an
24 Authorized Kia Dealer in the United States during its normal service
25 hours. While any Authorized Kia Dealer will perform warranty
26 service, Kia recommends that when possible you return to the
27 dealership where you purchased your Kia Vehicle in order to ensure
28 continuity in service and maintenance.

1 **Other Terms**

2 The warranty coverage is “applicable to Kia Vehicles registered and
3 normally operated in the United States.”³

4 94. KMA further warrants that “it will arrange for an Authorized Kia
5 dealer at locations of its choice to provide for the repair of your vehicle if it fails
6 to function properly during normal use. Authorized service facilities will remedy
7 such failures to function properly at Kia’s expense...”⁴

8 95. HMA provides a similar NVLW for the Class Vehicles, which states
9 in relevant part:

10 **WHAT IS COVERED**

11 Repair or replacement of any component originally manufactured or
12 installed by Hyundai Motor Company, Hyundai Motor Group, Hyundai
13 Motor Manufacturing Alabama (HMMA), Kia Manufacturing Mexico
14 (KMM), Kia Motors Manufacturing Georgia (KMMG) or Hyundai Motor
15 America (HMA) that is found to be defective in material or workmanship
16 under normal use and maintenance, except any item specifically referred to
17 in the section “What is not Covered.” Towing expense to the nearest
18 Hyundai Dealership or Authorized Service Facility is covered when the
19 vehicle is inoperable due to a warrantable defect. Repairs will be made
20 using new Hyundai Genuine Parts or Hyundai authorized remanufactured
21 parts.

22 **WARRANTY PERIOD**

23 The warranty period is limited to 5 years from the date of original retail
24 delivery or date of first use, or 60,000 miles, whichever occurs first.

25 **OBTAINING WARRANTY SERVICE**

26 _____
27 ³ *Id.*

28 ⁴ *Id.*

1 Warranty service will be provided by an authorized Hyundai Dealership
 2 without charge for parts or labor. This warranty will not apply to warranty
 3 service performed by those other than an authorized Hyundai Dealership.⁵

4 96. Headlights are important and necessary safety equipment on all
 5 motor vehicles. “Vehicle headlamps primarily satisfy two safety needs: Visibility
 6 and glare prevention. Headlamps illuminate the area ahead of the vehicle and
 7 provide forward visibility. . . . Visibility and glare are both related to motor
 8 vehicle safety. . . . Visibility has an obvious, intuitive relation to safety: The
 9 better drivers can see the road, the better they can react to road conditions and
 10 obstacles to avoid crashes. . . . [e]vidence suggests that diminished visibility
 11 likely increases the risk of crashes, particularly crashes at higher speeds
 12 involving pedestrians, animals, trains, and parked cars.”⁶

13 97. In 2019, Kia released its all-new flagship SUV, the 2020 Kia
 14 Telluride, while touting its capabilities and safety: “Telluride is engineered to be
 15 capable in a variety of driving conditions and provide a driving experience that is
 16 enjoyable and confidence-inspiring.”⁷ All Kia Telluride models LS, X, and EX,
 17 through present, come standardly quipped with halogen headlights. Kia Telluride
 18 LX models come standardly equipped with LED headlights. For reference,
 19 Figure 1 shows the Kia Telluride’s headlight assembly.

20
 21
 22 5

23 https://www.hyundaiusa.com/content/dam/hyundai/us/com/pdf/assurance/2020_Owners_Handbook_Warranty_r2.pdf

24 ⁶ Federal Register. “Federal Motor Vehicle Safety Standards; Lamps, Reflective
 25 Devices, and Associated Equipment, Adaptive Driving Beam Headlamps” February 2, 2022,
 26 available at: <https://www.federalregister.gov/documents/2022/02/22/2022-02451/federal-motor-vehicle-safety-standards-lamps-reflective-devices-and-associated-equipment-adaptive#citation-3-p9918> (last accessed November 11, 2022).

27 ⁷ “All-New 2020 Kia Telluride Offers Rugged Luxury,” January 4, 2019, available at:
 28 <https://www.kiamedia.com/us/en/media/pressreleases/14874/all-new-2020-kia-telluride-offers-rugged-luxury> (last accessed November 11, 2022).

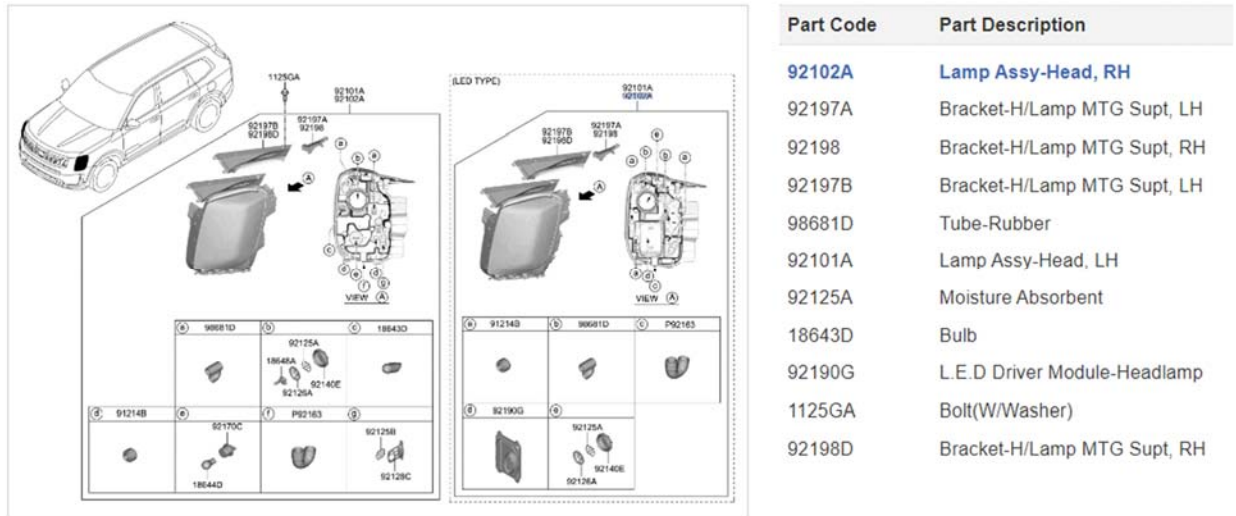


Fig. 1. Kia Telluride Headlight Assembly

98. Also in 2019, Hyundai released its all-new flagship SUV, the 2020 Hyundai Palisade, while touting its capabilities and safety: “All-New 2020 Hyundai Palisade Flagship SUV Brings Exceptional Comfort, Technology and Safety in a Bold Midsize SUV.”⁸ As with Kia, all Hyundai Palisade models SE and SEL, through present, come standardly equipped with halogen headlights. Hyundai Palisade Limited models come standardly equipped with LED headlights. For reference, Figure 2 shows the Hyundai Palisade’s headlight assembly.

⁸ “All-New 2020 Hyundai Palisade Mid-size SUV Makes its Global Debut at the 2018 Los Angeles Auto Show,” November 28, 2018, available at <https://www.hyundainews.com/en-us/releases/2658> (last accessed November 14, 2022).

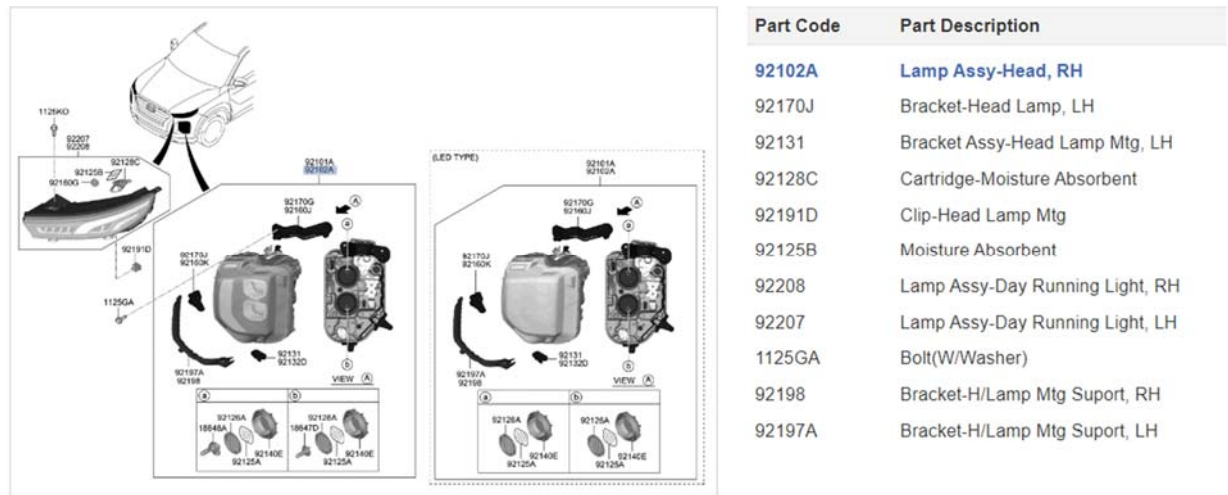


Fig. 2. Hyundai Palisade Headlight Assembly

99. All headlights and headlight assemblies are expected to absorb some moisture and still operate safely. However, discovery will show that the Headlights installed in the Class Vehicles have insufficient sealing and improper wiring, causing the Headlight Assemblies, including the high beams, low beams, daytime running lights (DRL), and fog lamps (FL), to absorb too much moisture and begin to dim, become improperly aimed, and ultimately and often suddenly, fail.

100. The Class Vehicles Headlights are defective because they are designed, manufactured, and/or installed in a manner that does not seal out moisture and humidity to a sufficient degree, which causes the Headlight assemblies' internal components, including the wiring and wiring connections, to fail, thereby causing a drastic reduction in light output, an unintentional change to aim calibration, and an inability to operate or function at all. Figure 3 shows a Class Vehicle headlight with improper water moisture and humidity intrusion that will require replacement.



Fig. 3. Class Vehicle Headlight Assembly with Improper Moisture Intrusion

101. The wiring and wiring connections are housed inside the headlight assembly and are vulnerable to improper moisture and humidity intrusion, which can cause the wiring and wiring connections to quickly degrade, thereby causing the Headlights, including the low beams, to not operate. For reference, Figures 4.1 through 4.3 show the location of the wiring and connections inside the headlight assembly of the Class Vehicles.



Fig. 4.1. Class Vehicle Headlight Assembly



Fig. 4.2. Inside of Headlight Assembly with Circular Seal in Upper Right Corner



Fig. 4.3. Wiring and Headlight Connections Inside Circular Seal within Headlight Assembly

102. The aim of the Class Vehicle's Headlights is also controlled by internal components of the Headlight assembly. Discovery will show that the aiming components are also degraded by abnormal moisture and humidity intrusion, causing the Headlights' output to be mis-aimed and mis-directed, resulting in a failure to illuminate in front of the vehicle. For reference, Figure 5

1 shows the low beam and high beam aim adjusters' location inside the Class
2 Vehicles' headlight assembly.



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4
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11 **Fig. 5. Low and High-Beam Aim Adjusters Inside Class Vehicle Headlight**
12 **Assembly**

13
14 103. Discovery will show that all Class Vehicles' Headlights and
15 Headlight Assemblies are designed, manufactured, and installed by Defendants in
16 substantially the same manner.

17 104. Discovery will confirm that the Headlight Defect in all Class
18 Vehicles is caused by improperly designed, manufactured, and/or installed
19 headlight assemblies in the Class Vehicles.

20 105. The Headlight Defect alleged is inherent in, and the same for, all
21 Class Vehicles.

22 106. Discovery will show that Defendants was aware of material facts
23 regarding the Headlight Defect, particular as a result of pre-production testing,
24 manufacturing quality control audits, and the early post-sale complaints by
25 consumers who purchased the Class Vehicles and experienced the Defect. Despite
26 this knowledge, Defendants failed to disclose the Defect and its associated safety
27 risk to consumers. As a result of this failure, Plaintiffs and Class Members have
28 been damaged.

The Headlight Defect Poses an Unreasonable Safety Hazard

107. The Headlight Defect poses an unreasonable safety hazard. The Defect causes drivers to have low or no visibility in the front of their Class Vehicles, which in turn increases the likelihood of collision with pedestrians, animals, inanimate objects, and road hazards.⁹ For this reason, functioning headlights are required safety devices in all passenger automobiles. *See* 49 CFR § 238.443 (2018).

108. Federal law requires automakers like Defendants to be in close contact with NHTSA regarding potential auto defects, including imposing a legal requirement (backed by criminal penalties) compelling the confidential disclosure of defects and related data by automakers to NHTSA, including field reports, customer complaints, and warranty data. *See TREAD Act*, Pub. L. No. 106-414, 114 Stat.1800 (2000).

109. Automakers have a legal obligation to identify and report emerging safety-related defects to NHTSA under the Early Warning Report requirements. *Id.* Similarly, automakers monitor NHTSA databases for consumer complaints regarding their automobiles as part of their ongoing obligation to identify potential defects in their vehicles, including those which are safety related. *Id.* Discovery will show that HMA and KMA are the agents of HMC and KMC respectively for the purpose of monitoring the NHTSA complaint database and for communication with NHTSA regarding safety defects, as manufacturers are required to do by federal law. Thus, Defendants knew or should have known of the many complaints about the Headlight Defect logged by NHTSA Office of Defects Investigation (ODI). The content, consistency, and disproportionate

⁹ *See* Federal Register. “Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment, Adaptive Driving Beam Headlamps” February 2, 2022, available at: <https://www.federalregister.gov/documents/2022/02/22/2022-02451/federal-motor-vehicle-safety-standards-lamps-reflective-devices-and-associated-equipment-adaptive#citation-3-p9918> (last accessed November 11, 2022).

1 number of those complaints alerted, or should have alerted, Defendants to the
2 Headlight Defect.

3 110. With respect solely to the Class Vehicles, the following are but a
4 few examples of the many complaints concerning the Headlight Defect which
5 are available through NHTSA's website, www.safercar.gov. Many of the
6 complaints reveal that Defendants, through their network of dealers and repair
7 technicians, have been made aware of the Headlight Defect. In addition, the
8 complaints indicate that despite having knowledge of the Headlight Defect and
9 even armed with knowledge of the exact vehicles affected, Defendants often
10 refused to diagnose the defect or otherwise attempt to repair it while Class
11 Vehicles were still under warranty.

12 **2020 Kia Telluride**

13 a. **DATE OF INCIDENT:** September 14, 2019

14 **DATE COMPLAINT FILED:** September 16, 2019

15 **NHTSA/ODI ID:** 11255716

16 **SUMMARY:** THE HEADLIGHTS AT NIGHT ARE POOR. THEY
17 DO NOT ILLUMINATE TRAFFIC SIGNS SUCH AS: SPEED
18 LIMIT, STOP, STREET/HIGHWAY INFO, YIELD, WARNING,
19 ETC. WHEN YOU APPROACH A THE UPSIDE OF A HILL,
20 VISIBILITY IS LIMITED TO 30-50 FEET. SIDE VISION WHEN
21 TURNING IS NON-EXISTENT. THIS OCCURS AT NIGHT
22 WHEN IN MOTION AND STOPPED.

23 b. **DATE OF INCIDENT:** November 10, 2019

24 **DATE COMPLAINT FILED:** November 14, 2019

25 **NHTSA/ODI ID:** 11280024

26 **SUMMARY:** THE TELLURIDE EX HAS AN ISSUE WITH IT'S
27 HEADLIGHTS, ESPECIALLY IN A DIMLY LIT AREA. WHEN
28 THE HEADLIGHTS ARE IN NORMAL MODE (NOT HIGH
BEAM) ON A STREET THAT DOES NOT HAVE
STREETLIGHTS (NO AMBIENT LIGHTS) OR YOU ARE
GOING AROUND A TURN, OR YOU ARE GOING SLIGHTLY
UPHILL, THERE IS VERY LITTLE VISIBILITY ON THE ROAD.
YOU CAN SEE A DISTINCT CUT OFF OF THE HEAD LIGHT
AND YOU CANNOT SEE BEYOND IT. THIS MAKES IT VERY

1 VERY DIFFICULT TO DRIVE IN A LOW LIGHT
2 ENVIRONMENT. IF I AM ON A HIGHWAY OR A WELL LIT
3 ROAD, THERE IS NO ISSUE. MY OTHER CAR 2010 AUDI A4
4 DOES NOT HAVE THIS ISSUE AND THE HEADLIGHTS
ILLUMINATE THE ROAD ADEQUATELY IN ANY
CONDITION

5 c. **DATE OF INCIDENT:** November 19, 2019

6 **DATE COMPLAINT FILED:** November 20, 2019

7 **NHTSA/ODI ID:** 11281250

8 **SUMMARY:** HALOGEN HEADLAMPS ON THE EX MODEL
9 DO A POOR JOB OF ILLUMINATING THE ROAD AHEAD
10 WHEN IN LOW BEAM MODE. I CAN HARDLY SEE A FEW
11 FEET. I ALSO DRIVE A LEXUS WHOSE HEADLAMPS DO A
12 FANTASTIC JOB OF ILLUMINATION IN LOW BEAM. I AM
13 HAVING TO PERIODICALLY ALTERNATE BETWEEN HIGH
14 BEAM AND LOW BEAM MODES (TO AVOID BLINDING
OPPOSITE TRAFFIC) WHEN DRIVING THE TELLURIDE ON
UNLIT ROADS OR POORLY LIT ROADS. WHY DIDN'T KIA
PROVIDE LED HEADLIGHTS FOR ALL TRIM LEVELS? THIS
IS A SERIOUS SAFETY ISSUE.

15 d. **DATE OF INCIDENT:** August 3, 2019

16 **DATE COMPLAINT FILED:** November 21, 2019

17 **NHTSA/ODI ID:** 11281548

18 **SUMMARY:** THIS IS A NEW VEHICLE, PURCHASED 8/2019.
19 IT IS MY BELIEF THAT THE HEADLIGHTS (BOTH HIGH AND
20 LOW BEAM), AS EQUIPPED, ARE DANGEROUSLY
21 DEFICIENT AND DO NOT PROVIDE NEARLY ADEQUATE
22 ILLUMINATION. I AM HESITANT TO DRIVE THE VEHICLE
AT NIGHT. I CONSIDER THIS HAZARDOUS AND WORTHY
OF CORRECTION BY THE MANUFACTURER. KIA
TELLURIDE EX AWD.

23 e. **DATE OF INCIDENT:** October 1, 2019

24 **DATE COMPLAINT FILED:** December 29, 2019

25 **NHTSA/ODI ID:** 11291891

26 **SUMMARY:** I HAVE A 2020 TELLURIDE AND THE
27 HEADLIGHTS PROVIDE SO LITTLE LIGHT THAT IT'S
28 DANGEROUS TO DRIVE AT NIGHT. THE NORMAL BEAMS
ARE SO DIFFUSE THEY PROVIDE INSUFFICIENT LIGHT
FORWARD TO SEE THE ROAD CLEARLY AND PROVIDE NO

1 LIGHT TO THE SIDES, SO YOU CAN'T SEE WHAT YOU ARE
 2 TURNING INTO WHEN YOU TURN. I CALLED KIA AND TWO
 3 LOCAL KIA DEALERS; THEY ARE AWARE OF THE
 4 PROBLEM BUT SAY THEY HAVE NO WAY TO FIX IT. GOOD
 5 HEADLIGHTS ARE FUNDAMENTAL AND, REALLY, AFTER
 6 100 YEARS OF CARS WITH HEADLIGHTS, YOU'D THINK
 7 THEY COULD GET THIS RIGHT. PLEASE FORCE KIA TO
 8 RECALL THE CARS AND FIX THE HEADLIGHTS AS SOON
 9 AS POSSIBLE. THANK YOU. SANDRA THANK YOU.
 10 SANDRA

11 f. **DATE OF INCIDENT:** November 26, 2019

12 **DATE COMPLAINT FILED:** January 24, 2020

13 **NHTSA/ODI ID:** 11301584

14 **SUMMARY:** THIS IS AN ONGOING ISSUE. THE
 15 HEADLIGHTS ON MY EX MODEL ARE SERIOUSLY
 16 DEFICIENT AND DANGEROUS, ESPECIALLY DURING
 17 DRIVING IN LOW LIGHT AREA DURING TURNS. AT MY
 18 OWN EXPENSE I'VE PURCHASED LED BULBS, WHICH HAVE
 19 IMPROVED VISIBILITY AHEAD OF ME, INCLUDING BEING,
 20 NOW, ABLE TO SEE THE SIDES OF THE ROAD, HOWEVER,
 21 VISIBILITY DURING TURNS IS NON-EXISTENT. AFTER 30 +
 22 YEARS OF DRIVING I HAVE NEVER BEEN SO
 23 UNCOMFORTABLE DRIVING AT NIGHT.

24 g. **DATE OF INCIDENT:** January 26, 2020

25 **DATE COMPLAINT FILED:** January 27, 2020

26 **NHTSA/ODI ID:** 11302348

27 **SUMMARY:** THE HEADLIGHTS ON THIS CAR ARE
 28 DANGEROUS AT NIGHT ON STREETS WITH NO LIGHTING
 AND ESPECIALLY DANGEROUS WHEN ITS RAINING. THE
 LIGHTS DO NO ILLUMINATE SPEED LIMIT SIGNS, STOP
 SIGNS, CAUTION SIGNS, YIELD SIGNS ETC. THEY DO NOT
 ILLUMINATE OVERHEAD INTERSTATE SIGNS. I HAVE
 TAKEN THE CAR TO THE DEALER AND THEY SAID THE
 LIGHTS ARE WORKING AS DESIGNED. THE INSURANCE
 INSTITUTE FOR HIGHWAY SAFETY ALSO GIVES A POOR
 RATING TO THESE LIGHTS. SOMETHING NEEDS TO BE
 DONE BEFORE SOMEONE GETS KILLED.

h. **DATE OF INCIDENT:** January 24, 2020

DATE COMPLAINT FILED: January 27, 2020

1 **NHTSA/ODI ID:** 11302241

2 **SUMMARY:** HEADLIGHTS ON LX TRIM ARE EXTREMELY
3 DIM. INSUFFICIENT FOR NIGHT DRIVING, CURVY/HILLY
4 ROADS, RAINY CONDITIONS. LANE MARKERS ARE
NEARLY IMPOSSIBLE TO SEE.

5 i. **DATE OF INCIDENT:** January 10, 2020

DATE COMPLAINT FILED: February 5, 2020

6 **NHTSA/ODI ID:** 11307230

7 **SUMMARY:** HALOGEN BULBS IN HEADLIGHTS ON S TRIM
8 ARE SUBOPTIMAL FOR ROADWAY ILLUMINATION
9 DURING NIGHTTIME DRIVING REGARDLESS OF TERRAIN,
ENVIRONMENT, OR DIRECRION. UPGRADE TO LED BULBS
10 SHOULD RESULT IN IMPROVED VISIBILITY.

11 j. **DATE OF INCIDENT:** April 26, 2019

DATE COMPLAINT FILED: February 4, 2020

12 **NHTSA/ODI ID:** 11306967

13 **SUMMARY:** THE HEADLIGHTS ON THIS CAR ARE
14 DANGEROUS AT NIGHT AND ARE ESPECIALLY
15 DANGEROUS WHEN IT'S RAINING. THE LIGHTS DO NO
16 ILLUMINATE SPEED LIMIT SIGNS, STOP SIGNS, CAUTION
17 SIGNS, YIELD SIGNS ETC... THE HEADLIGHTS DO NOT
18 ILLUMINATE FAR ENOUGH AHEAD ON THE ROADS. IF
YOUR GOING UP OR DOWN A HILL TO SEE A SAFE
DRIVING DISTANCE AHEAD.

19 k. **DATE OF INCIDENT:** November 30, 2019

DATE COMPLAINT FILED: February 4, 2020

20 **NHTSA/ODI ID:** 11306971

21 **SUMMARY:** THE HEADLIGHTS ON MY EX MODEL ARE
22 SERIOUSLY DEFICIENT AND DANGEROUS, ESPECIALLY
23 DURING DRIVING IN LOW LIGHT AREA DURING TURNS. AT
24 MY OWN EXPENSE I'VE PURCHASED LED BULBS, WHICH
25 HAVE IMPROVED VISIBILITY AHEAD OF ME. HOWEVER,
26 THE LIGHT IS BLOCKED BY THE PROJECTOR TYPE
27 HOUSING FROM ILLUMINATING THE LEFT AND RIGHT
SIDES OF THE FRONT OF THE VEHICLE. VISIBILITY
DURING TURNS IS NON-EXISTENT. THIS NEEDS TO BE
ADDRESSED ASAP.

28 1. **DATE OF INCIDENT:** February 3, 2020

DATE COMPLAINT FILED: February 4, 2020

NHTSA/ODI ID: 11307078

SUMMARY: EXTERIOR LIGHTING (HEADLIGHTS) IS TERRIBLE ON MY EX MODEL. STANDARD OE HEADLIGHTS ARE FAR TOO INADEQUATE FOR SAFE DRIVING AT NIGHT. SIDE CUTOFF OF THE HEADLIGHTS MAKES READING STREET SIGNS DIFFICULT WHEN THERE IS NO SUPPLEMENTAL LIGHT OUTSIDE OF THE CAR HEADLIGHTS. THESE HEADLIGHTS SHOULD BE LED (IT'S 2020 FOR [XXX] SAKE) AND NOT SO CONCENTRATED LIKE A SPOT LIGHT. INFORMATION REDACTED PURSUANT TO THE FREEDOM OF INFORMATION ACT (FOIA), 5 U.S.C. 552(B)(6). *TR.

m. **DATE OF INCIDENT:** February 2, 2020

DATE COMPLAINT FILED: February 2, 2020

NHTSA/ODI ID: 11306611

SUMMARY: WHEN DRIVING AT NIGHT IN THE EX TRIM, THE HALOGEN LIGHTBULBS ARE INEFFECTIVE FOR LIGHTING THE ROADWAY AHEAD. OUTSIDE OF CITY DRIVING WHERE OUTSIDE LIGHTING IS MINIMAL, IT IS NEARLY IMPOSSIBLE TO SEE A SAFE DISTANCE AHEAD OF THE VEHICLE. IN ADDITION, BECAUSE OF THE CUTOFF DESIGN OF THE PROJECTOR HOUSING, STREET SIGNS SUCH AS STOP SIGNS AND SPEED LIMIT SIGNS ARE BARELY ILLUMINATED AT ALL.

n. **DATE OF INCIDENT:** May 14, 2020

DATE COMPLAINT FILED: May 19, 2020

NHTSA/ODI ID: 11325091

SUMMARY: THE HEADLIGHTS IN THE KIA TELLURIDE ARE SIGNIFICANTLY DEFICIENT IN ILLUMINATING THE FRONT CORNERS OF THE VEHICLE DURING TURNS IN LOW OR NON-LIT AREAS. DRIVING IN MY NEIGHBORHOOD AND ON THE ROADS THAT GET ME THERE FEELS EXTREMELY DANGEROUS WHILE DRIVING AT NIGHT. VISIBILITY WHEN TURNING CORNERS IS DANGEROUSLY LOW. THIS SCARES ME NOT ONLY AS A TELLURIDE OWNER BUT AS A PEDESTRIAN AND A PARENT WITH TWO SMALL CHILDREN. AS THE TELLURIDE'S POPULARITY CONTINUES TO GROW SO DOES THE SAFETY HAZARD THESE POORLY DESIGNED HEADLIGHTS POSE. CORRECTIVE ACTION TO

1 ADEQUATELY AND SAFELY ILLUMINATE THE ROAD
2 WHILE MAKING TURNS IS ESSENTIAL AND NEEDS TO BE
3 ADDRESSED IMMEDIATELY. PLEASE DO THE
4 RESPONSIBLE THING AND PROTECT FAMILIES AND
5 COMMUNITIES BY RECALLING THE TELLURIDE AND
6 MAKE A SIMPLE DESIGN CHANGE THAT WOULD NOT
7 ONLY IMPROVE OWNER SATISFACTION, BUT ALSO
8 PROTECT A POTENTIALLY UNSEEN PEDESTRIAN, JOGGER,
9 BICYCLIST OR PET. A VEHICLE'S SAFETY SHOULD BE
10 PARAMOUNT BOTH DAY AND NIGHT. IF NOTHING ELSE,
11 PLEASE PROVIDE THE OPTION FOR TELLURIDE OWNERS
12 TO WIDEN THE HEADLIGHT BEAM AT OUR OWN EXPENSE
13 SO WE CAN CHOOSE TO PROTECT OURSELVES AND OUR
14 NEIGHBORS BY PAYING FOR IT OUT-OF-POCKET. *TR.

15 o. **DATE OF INCIDENT:** March 1, 2020

16 **DATE COMPLAINT FILED:** March 3, 2020

17 **NHTSA/ODI ID:** 11315912

18 **SUMMARY:** NIGHT DRIVING IS HORRIBLE ON THE EX
19 TRIM WHERE VISIBILITY ON EITHER SIDE IS DANGEROUS.
20 I ALMOST HIT A PEDESTRIAN BECAUSE THE VISIBILITY IS
21 SO POOR. THIS NEEDS TO BE ADDRESSED. PLEASE DON'T
22 WAIT FOR SOMEONE TO BE FATALLY INJURED. THIS IS
23 UNACCEPTABLE!

24 p. **DATE OF INCIDENT:** February 29, 2020

25 **DATE COMPLAINT FILED:** March 2, 2020

26 **NHTSA/ODI ID:** 11315718

27 **SUMMARY:** LIGHTING FAILS TO ILLUMINATE TO THE
28 SIDES OF THE VEHICLE ON THE EX TRIM SO THAT THERE
ARE SPOTS OF NO LIGHTING. THIS IS EXTREMELY
DANGEROUS WHEN DRIVING AT NIGHT AND
PARTICULARLY WHEN TURNING CORNERS. THIS SHOULD
BE REMEDIED AND A RECALL ISSUED TO CORRECT THE
CONCERN AS IT IS A SERIOUS SAFETY HAZARD.

q. **DATE OF INCIDENT:** March 1, 2020

DATE COMPLAINT FILED: February 26, 2020

NHTSA/ODI ID: 11311596

SUMMARY: BLIND SPOT COLLISION WARNING SYSTEM IS
MALFUNCTIONS WHENEVER IT RAINS. VEHICLE HAS 3000
MILES ON IT AND FOR THE 5TH TIME IN 2 MONTHS THE

1 BLIND SPOT SYSTEM ALARM SYSTEM GOES OFF WHILE
 2 DRIVING IN THE RAIN. DEALERSHIPS REFUSING TO LOOK
 3 AT THE PROBLEM UNLESS THE ENGINE LIGHT IS ON,
 4 WHICH IT TURNS OFF ONCE THE SENSORS DRY OFF LOW
 5 BEAM LIGHTS ARE TOO BRIGHT... POLICE HAVE STOPPED
 6 ME TWICE THINKING THEY ARE HIGH BEAMS.. ALSO
 7 ONCOMING TRAFFIC CONTINUES TO BLAST THERE HIGH
 8 BEAMS AT OUR VEHICLE THINKING OUR HIGH BEAMS
 9 ARE ON CAUSING A DANGEROUS DRIVING SITUATION..
 10 LOCAL DEALERSHIPS REFUSE TO FIX WARRANTY
 11 PROBLEMS BECAUSE CAR WAS NOT PURCHASSED FROM
 12 THEM

13 r. **DATE OF INCIDENT:** February 15, 2020

14 **DATE COMPLAINT FILED:** February 17, 2020

15 **NHTSA/ODI ID:** 11309673

16 **SUMMARY:** THE HEADLIGHTS HAVE BLIND SPOTS ON THE
 17 SIDES. WHEN GOING AROUND CURVES YOU LOOSE THE
 18 SIDE OF THE ROAD. NO VISIBILITY AT ALL AT NIGHT. THIS
 19 IS VERY DANGEROUS. I HAVE TALKED TO COMPANYS
 20 THAT INSTALLS HEADLIGHTS AND OTHER MECHANICAL
 21 PARTS TO VEHICLES AND WAS TOLD THAT ADDING FOG
 22 LIGHTS WILL NOT HELP BECAUSE THE HEADLIGHTS ARE
 23 ONLY PROJECTING FORWARD LIGHTS. WAS TOLD THAT
 24 ADDING FOG LIGHTS WOULD ONLY PROJECT FORWARD
 25 ALSO BECAUSE OF THE WAY THEY WOULD HAVE TO SET.
 26 THIS NEEDS TO BE CORRECTED!!!

27 **2021 Kia Telluride**

28 s. **DATE OF INCIDENT:** January 3, 2022

DATE COMPLAINT FILED: January 11, 2022

NHTSA/ODI ID: 11447121

SUMMARY: Optional LED headlight buckets fog up and will not
 dry out. Kia has a service bulletin out regarding this issue, it was
 performed and the situation has not improved. Recently, in minus
 20-30 degree F weather, the condensation inside the housing frosted
 up the entire inside of the housing. The LED headlights do not
 generate enough heat to adequately melt the frost creating decreased
 headlight performance. The vehicle has been into the dealer multiple
 times and the service bulletin was performed once and the desiccant
 packs were replaced the second time. The frost issue occurred after

1 both had been done. Kia states that this is normal operation for their
 2 LED headlight bucket and the dealership, claiming to be under
 3 orders from Kia will not dedicate any more time to the investigation
 of my issue.

4 t. **DATE OF INCIDENT:** December 8, 2020

5 **DATE COMPLAINT FILED:** December 8, 2021

6 **NHTSA/ODI ID:** 11443178

7 **SUMMARY:** Kia has been on notice of the Telluride's deficient
 8 headlights with the ES model since at least 2019 and have done
 9 nothing. The highest end model has LED lights so Kia is more than
 10 capable of fixing this problem. I know that dozens of consumers like
 11 myself have filed complaints with the NHTSA and other
 12 organizations and nothing has been done. I have called Kia
 13 headquarters at least 3 times to complain. The headlights do not
 14 provide enough light to safely drive at night. I'm not an engineer (I'm
 15 a lawyer) but I know that the design is faulty. Now that it's
 16 wintertime and dark at 5:00, I am unable to drive the car at night for
 17 fear of killing myself, my family, a pedestrian, or pet. Why hasn't
 18 NHTSA done anything to investigate these numerous complaints?
 19 Why have years gone on with resolution or recall? Is Kia (or the
 20 NHSTA) waiting for someone to actually die before they do
 something? (It seems so based on the below questions). I guess it's
 not enough that consumers like myself can't use our cars at night. I
 CAN'T BE ANY CLEARER: SOMEONE IS GOING TO GET
 KILLED. YOU ARE ON NOTICE. Please let me know the results of
 your investigation into this matter because this has gone on long
 enough. Conduct an investigation and get to the bottom on this
 please.

21 u. **DATE OF INCIDENT:** July 1, 2021

22 **DATE COMPLAINT FILED:** July 20, 2021

23 **NHTSA/ODI ID:** 11425646

24 **SUMMARY:** This car is very dangerous to drive at night
 25 particularly when making turns. There is a total blackout when
 26 turning on darker roads. Obviously test drives are done during the
 27 day so you wouldn't notice this problem. After reviewing a Telluride
 28 Forum this was apparently a problem on the 2020 vehicles that has
 not been addressed by Kia. Some members of forum have suggested
 switching front headlights out to LED but that is not a good option as
 I live in an area where visibility can be made worse with LED when
 snowing. Had I been aware of this problem never would have

1 purchased this car. Very scary to drive at night.

2 v. **DATE OF INCIDENT:** October 15, 2020

3 **DATE COMPLAINT FILED:** November 19, 2020

4 **NHTSA/ODI ID:** 11315912

5 **SUMMARY:** I RECENTLY DROVE MY NEW 2021 TELLURIDE
6 SX TO MY CABIN IN GA. AND FOUND A MAJOR ISSUE
7 WITH THE HEADLIGHTS WHILE DRIVING THROUGH THE
8 BACKWOODS. THE VISIBILITY USING THE LED
9 HEADLIGHTS AND HIGH BEAMS ARE TERRIBLE AND POSE
10 A DANGER. IF YOU ARE DRIVING DOWNHILL AND THE
11 ROAD GOES UP OR TURNS YOU HAVE ZERO VISIBILITY, IT
12 ACTUALLY CREATES A LINE AS IN MY PICTURE. I
13 BROUGHT IT INTO MY KIA DEALER AND THEY SAID
14 CORPORATE IS AWARE OF IT BUT THERE IS NO FIX AS OF
15 YET SO THEY ADJUSTED THEM AS BEST THEY COULD.
16 THIS IS EXTREMELY DANGEROUS AND PEOPLE WILL DIE
17 IF THEY DO NOT GET A A FIX FOR THIS ISSUE.

18 2022 Kia Telluride

19 w. **DATE OF INCIDENT:** May 20, 2022

20 **DATE COMPLAINT FILED:** November 2, 2022

21 **NHTSA/ODI ID:** 11491918

22 **SUMMARY:** Headlights are NOT bright enough for night driving.

23 2021 Hyundai Palisade

24 x. **DATE OF INCIDENT:** July 13, 2020

25 **DATE COMPLAINT FILED:** August 2, 2022

26 **NHTSA/ODI ID:** 11477157

27 **SUMMARY:** Head lights -When driving in mountains (curves and
28 going up and down hills) at night the head lights produced a shadow
effect, which gave the impression it was on the windshield sight line.
This shadow effect varied from 1/3 to 2/3 of the windshield which
caused a distorted view of the road ahead. There were 4 adults in the
car and all agreed that it was making the road dangerous to drive on.
We had to slow down well below the actual speed limit which would
cause cars coming around a curve behind us to quickly slow down or
run into us. - Took car to Bronco Motors in Boise Id and explained
the headlight issue they told us that one other person had come in
complaining about this same issue. Their mechanic told us that there

1 is no way to adjust the headlights. -No warnings

2 y. **DATE OF INCIDENT:** December 22, 2021

3 **DATE COMPLAINT FILED:** March 2, 2021

4 **NHTSA/ODI ID:** 11444720

5 **SUMMARY:** The low beam headlights are too bright causing
6 vehicles in the opposite direction to flash their high beams thinking
7 that my high beams are on. This is a safety factor as I am often
8 blinded by other drivers who flash their high beams and in many
9 cases keep their high beams on. I've visited Palisade chat rooms and
10 have found that other drivers have the same complaint. I have
11 contacted Hyundai headquarters and reported the problem and have
12 taken it to dealers three times to have the low beams lowered. I have
13 been told that the low beam adjustment is correct and nothing can be
14 done to fix my problem. I believe this low beam problem is a design
15 defect and should be corrected. My vehicle is available for
16 examination if necessary.

13 **Customer Complaints on Third-Party Websites**

14 111. Similarly, complaints posted by consumers in internet forums
15 demonstrate that the defect is widespread and dangerous and that it can manifest
16 without warning and/or suitable repair. The complaints also indicate Defendants'
17 awareness of the problems with the Headlight and how potentially dangerous the
18 defect is for consumers, not only to the extent such complaints reference contact
19 with authorized dealerships and Defendants themselves, but also because HMA
20 and KMA employ staff to monitor the perception of the brand. The following are
21 a sample of consumer complaints (spelling and grammar mistakes remain as
22 found in the original):

23 112. On tellurideforum.org, a consumer of a 2021 Kia Telluride posted
24 the following:

25 I have had my Telluride S 2021 since August and I am very
26 frustrated with the headlights at night. #1 I don't think the
27 main headlights beam high enough. When I go up a hill I must
28 have my brights on to adequately see in front of me. #2 I

1 noticed a complete blind spot when turning...At night if
2 someone walked in front of my car while I am turning I could
3 never see them. This is quite scary to me. Thought perhaps it
4 is because I am short but now I am reading that this is a
5 common complaint with this car. Now I read that the "fog
6 lights" can help illuminate the car when turning. Of course
7 now I found out I don't have fog lights in this car style. I hate
8 to say this but if I had any inkling of this problem would never
9 have bought this car. It is very dangerous.

10 113. On tellurideforum.org.com, a consumer of a 2020 Kia Telluride
11 posted the following:

12 Hi. My telluride is less than a year old. I noticed the other
13 night that when I switch to high beams nothing changes. Low
14 beams work like they always have. Are they separate bulbs? Is
15 this a warranty issue? How hard is it to upgrade the lights. The
16 original sucks. It's a LX if that matters.

17 114. On tellurideforum.org.com, a consumer of a 2020 Kia Telluride
18 posted the following:

19 We just got a Telluride EX a couple of weeks ago. We hadn't
20 driven it at night on dark roads until last night. It was
21 dangerous in our opinion. The light had a definite line that
22 almost appeared like a dark screen on the windshield. Upon
23 stopping and looking at the headlamps, I discovered that there
24 is some kind of black deflector on the bottom and top of the
25 headlamp bulb. This creates a "border" at the top of the light
26 being shone on the road and surroundings. Normal headlamps
27 allow some light to shine above this artificial border. I find
28 this current lighting dangerous.

1 115. On tellurideforum.org.com, a consumer of a 2020 Kia Telluride
2 consumer posted the following:

3 High beam headlights on Kia Telluride stopped working, plus
4 when on low beam light projection is only about 20 yards.
5 Safety issue. Suggest contacting NHSTA for this issue. Kia
6 dealership cannot schedule appointment for a month.

7 116. On carproblemzoo.com, a 2020 Kia Telluride consumer posted the
8 following:

9 High beams will not function. Replaced light bulbs. Did not
10 fix the problem. Replaced relay and fuse. Did not fix the
11 problem. Took to dealer. Service tech appeared to be
12 befuddled. His only suggestion was to replace both headlight
13 assemblies at a cost of over \$2000. 00 or just wait until kia
14 announced a recall as he could not determine exact cause of
15 problem.

16 117. On carproblemzoo.com, another consumer posted the following:

17 I love this car. I replaced my 2016 Lexus gl 460 with the 2020
18 Telluride ex v6, a low milage previously owned car I found at
19 a dealership because I felt it compared favorably in every way
20 with the Lexus, which I had bought new. Unfortunately, like
21 others who have complained about the same lighting issue, I
22 did not do a night time test drive of this car, but when I did
23 finally drive it at night - wow! the headlights on this vehicle
24 are the absolute worst I have ever experienced as a driver. My
25 first experience driving this kia after dark on a city street
26 proved to be dangerous and scary. Lighting was so poor-
27 especially the peripheral lighting and low beam height range -
28 that I could not find my destination because the house

1 numbers on the mailboxes as well as the street sign were not
2 lit well enough to read. But what was worse is that I very
3 nearly hit a pedestrian who was walking on the side of the
4 road. By the way, my vision is 20/20 and night driving has not
5 preiously been a problem. I knew there had to be something
6 wrong with the lighting system so the next day I took the car
7 straight to the dealer who checked the bulbs and their
8 placement; he found no problem. I am a widow so I drive
9 myself everywhere I go, including at night. Bright, safe
10 illumination is a must! I am not driving much at night these
11 days because I feel it is way too risky considering the poor
12 visibility after dark. I can tell you that kia will have a law suit
13 (or multiple suits) on their hands when this poor headlight
14 situation is the cause of a serious accident!

15 118. On carproblemzoo.com, a 2021 Kia Telluride consumer posted the
16 following:

17 I recently drove my new 2021 Telluride sx to my cabin in GA.
18 And found a major issue with the headlights while driving
19 through the backwoods. The visibility using the led headlights
20 and high beams are terrible and pose a danger. If you are
21 driving downhill and the road goes up or turns you have zero
22 visibility, it actually creates a line as in my picture. I brought it
23 into my kia dealer and they said corporate is aware of it but
24 there is no fix as of yet so they adjusted them as best they
25 could. This is extremely dangerous and people will die if they
26 do not get a a fix for this issue.

27 119. On carproblemzoo.com, a Hyundai Palisade consumer posted the
28 following:

1 head lights -when driving in mountains (curves and going up
2 and down hills) at night the head lights produced a shadow
3 effect, which gave the impression it was on the windshield
4 sight line. This shadow effect varied from 1/3 to 2/3 of the
5 windshield which caused a distorted view of the road ahead.
6 There were 4 adults in the car and all agreed that it was
7 making the road dangerous to drive on. We had to slow down
8 well below the actual speed limit which would cause cars
9 coming around a curve behind us to quickly slow down or run
10 into us. - took car to bronco motors in boise id and explained
11 the headlight issue they told us that one other person had come
12 in complaining about this same issue. Their mechanic told us
13 that there is no way to adjust the headlights.

14 120. On carproblemzoo.com, a Hyundai Palisade consumer posted the
15 following:

16 The low beam headlights are too bright causing vehicles in the
17 opposite direction to flash their high beams thinking that my
18 high beams are on. This is a safety factor as I am often blinded
19 by other drivers who flash their high beams and in many cases
20 keep their high beams on. I've visited Palisade chat rooms and
21 have found that other drivers have the same complaint. I have
22 contacted Hyundai headquarters and reported the problem and
23 have taken it to dealers three times to have the low beams
24 lowered. I have been told that the low beam adjustment is
25 correct and nothing can be done to fix my problem. I believe
26 this low beam problem is a design defect and should be
27 corrected. My vehicle is available for examination if
28 necessary.

1 121. On palisadeforums.org, a 2021 Hyundai Palisade consumer posted
2 the following:

3 The headlights on the 2021 Palisade are very dangerous at
4 night! You have a black blob on the road at all times and can
5 not see in the oncoming lane!

6 Very Dangerous and a law suit waiting to happen. Sad
7 Hyundai knows about this issue and has not changed their
8 lighting!

9 **Defendants Had Superior and Exclusive Knowledge of the Headlight Defect**

10 122. Defendants had superior and exclusive knowledge of the Headlight
11 Defect and knew or should have known that the defect was not known or
12 reasonably discoverable by Plaintiffs and Class Members before they purchased
13 or leased the Class Vehicles.

14 123. Discovery will show that before Plaintiffs purchased his Class
15 Vehicle, and since at least 2019, Defendants knew about the Headlight Defect
16 through sources not available to consumers, including pre-release testing data
17 produced by HMC and KMC, early consumer complaints to HMA and KMA and
18 their dealers who are their agents for vehicle repairs, consumer complaints
19 regarding earlier model years equipped with the same Headlight on websites
20 monitored by HMA and KMA, testing conducted in response to those
21 complaints, high failure rates and replacement part sales data, consumer
22 complaints to NHTSA (which HMA and KMA monitor), by developing TSBs in
23 an effort to address the Headlight Defect, and through other aggregate data from
24 HMA and KMA's dealers about the problem. TSBs are issued exclusively to
25 HMA and KMA's dealerships and service providers and are not disseminated to
26 consumers, even if their vehicles receive services as outlined in the bulletins.

27 124. HMC and KMC are experienced in the design and manufacture of
28 consumer vehicles. As experienced manufacturers, HMC and KMC conducts

1 tests, including pre-sale durability testing, on incoming components, including
2 the Headlight and Headlight Assembly, to verify the parts are free from defect
3 and align with their specifications. As described above, Defendants all
4 communicate with each other regarding technical information in components
5 which are installed in both Hyundai and Kia-branded vehicles. Thus, Defendants
6 knew or should have known the Headlight was defective and prone to putting
7 drivers in a dangerous position due to the inherent risks of the Headlight Defect.

8 125. Additionally, discovery will show that Defendants knew of the
9 impact of this defect from the sheer number of reports received from dealerships.
10 HMA and KMA's customer relations departments, which interact with individual
11 dealerships to identify potential common defects, have received numerous
12 reports regarding the Headlight Defect. HMA and KMA have shared these
13 complaints, as well as the associated technical data, with other affiliates,
14 including HMC and KMC, which led to the release of TSBs and dealer
15 communications drafted in conjunction with HMC and KMC. HMA and KMA's
16 customer relations departments also collects and analyzes field data including,
17 but not limited to, repair requests made at dealerships, technical reports prepared
18 by engineers who have reviewed vehicles for which warranty coverage is being
19 requested, parts sales reports, and warranty claims data.

20 126. HMA and KMA's warranty department similarly analyzes and
21 collects data submitted by its dealerships to identify warranty trends in its
22 vehicles. It is HMA and KMA's policy that when a repair is made under
23 warranty the dealership must provide HMA or KMA with detailed
24 documentation of the problem and a complete disclosure of the repairs employed
25 to correct it. Dealerships have an incentive to provide detailed information to
26 HMA or KMA, because they will not be reimbursed for any repairs unless the
27 justification for reimbursement is sufficiently detailed.

28 127. Well before the first Class Vehicle was sold, as early as March

1 2010, Defendants knew or should have known that the Headlights were defective
2 in design and/or manufacture and that the Defect would adversely affect the
3 drivability of the Class Vehicles and cause safety hazards, including collisions.
4 HMC and KMC first began using Headlight Assembly components that were
5 vulnerable to improper moisture and humidity intrusion in its 2010 model year
6 vehicles.¹⁰

7 128. Indeed, beginning in March 2010, KMA first issued TSB No.
8 BOD055 for all Kia models, ostensibly providing “Information for Headlamp
9 Condensation and Moisture.” The TSB advises that “Headlamp assembly
10 replacement WILL NOT be necessary in most cases.” However, it directs
11 authorized dealership personnel to replace the headlamp assembly where there is
12 improper “water intrusion.” This TSB was written in conjunction with KMC.

13 129. In January 2019, KMA began “a Product Improvement Campaign to
14 adjust the headlamp aim” for certain Class Vehicles. This product improvement
15 campaign was conducted “to more precisely focus the headlamps on the correct
16 position on the roadway and reduce the glare from the headlamps to oncoming
17 traffic.” The communication to “All Kia Dealer Principals” regarding the product
18 improvement campaign states “The Insurance Institute for Highway Safety
19 (IIHS) is a well-known organization that conducts supplemental testing to
20 evaluate certain aspects of vehicle performance. As a result of such testing, Kia
21 and IIHS have determined that improvements could be made to adjust the
22 headlamp aim to improve the focus and reduce glare from the headlamps to
23 oncoming traffic.” The campaign was updated in January 2020 and designed and
24 implemented in conjunction with KMC. Discovery will show that the problem
25 persists despite this product improvement campaign and is a result of the Defect
26

27 ¹⁰ “Headlight Condensation TSB,” March 12, 2010, available at: [https://www.kia-](https://www.kia-forums.com/threads/headlight-condensation-tsb.57749/)
28 [forums.com/threads/headlight-condensation-tsb.57749/](https://www.kia-forums.com/threads/headlight-condensation-tsb.57749/) (last accessed November 14, 2022).

1 as described herein.

2 130. In April 2019, KMA issued a service action, TSB No. SA380, for
3 “Telluride Headlamp Inspection.” The service action was issued to address
4 “intermittent or inoperative Daytime Running Lamp (DRL) at the headlamps due
5 to an internal connection fault.” The service action describes the headlight
6 inspection procedure and states “Leave the DRLs on for twenty minutes. If one
7 or both DRL(s) is/are not operating as designed, proceed to the Headlamp
8 Replacement Procedure below.” This TSB was written in conjunction with
9 KMC. Discovery will show that the problem persists despite headlight and
10 headlight assembly replacement and is a result of the Defect as described herein.

11 131. In June 2021, KMA issued TSB No. ELE242, regarding “Headlamp
12 Soft Connection Inspection.” The service action was issued to address
13 “inoperative/intermittently inoperative. . . low/sub-low beam on Telluride.” The
14 service action describes the headlight inspection procedure and states “If
15 headlamp does NOT operate normally (low beam or sub-low beam), replace the
16 headlamp with a new part.” This TSB was written in conjunction with KMC.
17 Discovery will show that the problem persists despite headlight and headlight
18 assembly replacement and is a result of the Defect as described herein.

19 132. In September 2021, KMA issued a significantly revised TSB No.
20 BOD055 (Rev 1) for certain Class Vehicles. The TSB was still titled
21 “Information for Headlamp Condensation and Moisture.” Specifically, the TSB
22 was issued to correct “failed headlamp assembly seals or gaskets,” resulting in
23 excessive “water intrusion.” The TSB directs dealership personnel to “locate the
24 area of failure and determine if it is repairable. In some cases, headlamp
25 replacement will be necessary.” This TSB was written in conjunction with KMC.
26 Discovery will show that the problem persists despite headlight and headlight
27 assembly replacement and is a result of the Defect as described herein.

28 133. Similarly, in July 2017, HMA first issued a TSB for all Hyundai

1 models, ostensibly providing “Information for Lamp Condensation.” TSB No.
2 17-BD-01 provided “information regarding headlamp and rear combination lamp
3 condensation related to moisture accumulation in the lens assembly.” The TSB
4 advises that, if moisture remains inside the headlight assembly after the directed
5 drying procedures, “further repairs need to be performed on the lamp to address
6 the condition.” This TSB was written in conjunction with HMC.

7 134. In July 2019, HMA superseded TSB No. 17-BD-01 with TSB No.
8 19-BD-003H for certain Class Vehicles. The TSB was titled “Information for
9 Headlamp and Rear Combination Lamp Condensation.” Specifically, the TSB
10 was issued to correct headlight problems caused by “water leak[s].” The TSB
11 stated that, “If water is collecting at the bottom of the headlamp assembly or the
12 condensation remains after the headlamps have been on for 30 minutes or more,
13 there may be a water leak in the assembly. The leak may be caused by a poor
14 seal between the headlamp housing and lens, cracks in the headlamp assembly,
15 or poor fitment. The condition should be diagnosed and repaired as necessary.”
16 The only repair procedure prescribed by the TSB for this condition was
17 “replacement of the head lamp assembly.” This TSB was written in conjunction
18 with HMC. Discovery will show that the problem persisted despite the advised
19 repairs and TSB No. 20-BD-014H, issued in July 2020 for certain Class
20 Vehicles, updated this TSB with additional service information, and is a result of
21 the Defect as described herein.

22 135. Discovery will show that each TSB, product improvement
23 campaign, and service action issued by HMA and KMA was approved by
24 managers, directors, and/or executives at HMC and KMC. Therefore, discovery
25 will show that Defendants’ managers, directors, and/or executives knew, or
26 should have known, about the Headlight Defect, but refused to disclose the
27 Headlight Defect to prospective purchasers and owners, and/or actively
28 concealed the Headlight Defect.

1 136. The existence of the Headlight Defect is a material fact that a
2 reasonable consumer would consider when deciding whether to purchase or lease
3 a Class Vehicle. Had Plaintiffs and other Class Members known of the Headlight
4 Defect, they would have paid less for the Class Vehicles or would not have
5 purchased or leased them.

6 137. Reasonable consumers, like Plaintiffs, expect that a vehicle's
7 Headlights are safe, will function in a manner that will not pose a safety risk and
8 will illuminate the area in front of the vehicle adequately, and are free from
9 defects. Plaintiffs and Class Members further reasonably expect that Defendants
10 will not sell or lease vehicles with known safety defects, such as the Headlight
11 Defect, and will disclose any such defects to its consumers when it learns of
12 them. They did not expect Defendants to conceal and fail to disclose the
13 Headlight Defect to them, and to then continually deny its existence.

14 **Defendants Have Actively Concealed the Headlight Defect**

15 138. Despite their knowledge of the Headlight Defect in the Class
16 Vehicles, Defendants actively concealed the existence and nature of the defect
17 from Plaintiffs and Class Members. Specifically, Defendants failed to disclose or
18 actively concealed at and after the time of purchase, lease, or repair:

19 (a) any and all known material defects or material nonconformity
20 of the Class Vehicles, including the defects pertaining to the Headlights;

21 (b) that the Class Vehicles, including the Headlight, were not in
22 good working order, were defective, and were not fit for their intended
23 purposes; and

24 (c) that the Class Vehicles and their Headlights were defective,
25 despite the fact that Defendants learned of such defects as early as 2019, if
26 not earlier.

27 139. Discovery will show that when consumers present their Class
28 Vehicles to an authorized HMA and KMA's dealer for Headlight repairs, rather

1 than repair the problem under warranty, their dealers either inform consumers
2 that their vehicles are functioning properly or conduct repairs that merely mask
3 the Headlight Defect such as attempting to reposition the lights even when the
4 headlights are dim rather than out of position. This includes Kia's Product
5 Improvement Campaign in 2019, designed and implemented in conjunction with
6 HMC and KMC which attempted to deflect from the root causes of the Defect,
7 namely defective seals which allow moisture and condensation to intrude on the
8 headlight assembly causing dim and failed headlights.

9 140. Defendants have caused Plaintiffs and Class Members to expend
10 money and/or time at their dealerships to diagnose, repair or replace the Class
11 Vehicles' Headlights and/or related components, despite Defendants' knowledge
12 of the Headlight Defect.

13 **Defendants Have Unjustly Retained a Substantial Benefit**

14 141. Discovery will show that Defendants unlawfully failed to disclose
15 the alleged defect to induce Plaintiffs and other putative Class Members to
16 purchase or lease the Class Vehicles.

17 142. Plaintiffs further allege that Defendants thus engaged in deceptive
18 acts or practices pertaining to all transactions involving the Class Vehicles,
19 including Plaintiffs.'

20 143. Specifically, Plaintiffs purchased their vehicles and/or parts needed
21 to attempt repairs to their vehicles from authorized dealerships. Those dealerships
22 purchased those vehicles and/or components from HMA or KMA. In order, HMA
23 and KMA purchase their vehicles and components which are sold to dealerships
24 from HMC or KMC.

25 144. As discussed above, therefore, Plaintiffs allege that Defendants
26 unlawfully induced them to purchase their Class Vehicles and/or components for
27 their Class Vehicles by concealing a material fact (the defective Headlight) and
28 that they would have paid less for the Class Vehicle, or not purchased it at all, had

1 they known of the defect.

2 145. Moreover, because Plaintiffs are likely to need further replacements
3 of the headlight assemblies in the future, they will be forced to purchase more
4 defective components from Defendants absent some relief which forces the
5 Defendants to correct the defective components.

6 146. Accordingly, Defendants' ill-gotten gains, benefits accrued in the
7 form of increased sales and profits resulting from the material omissions that did -
8 and likely will continue to - deceive consumers, should be disgorged.

9 **The Agency Relationship regarding the Vehicle Warranties Between**
10 **Defendants HMA and KMA and their Authorized Dealers With Regard to**
11 **Warranty Service and Repairs**

12 147. In order to sell vehicles to the general public, Defendants HMA and
13 KMA enter into agreements with their networks of authorized dealerships to
14 engage in retail sales with consumers such as Plaintiffs while also advertising the
15 warranties provided by HMA and KMA directly to consumers when they
16 purchase a Kia or Hyundai-branded vehicle from the authorized dealership.
17 These agreements specifically authorize the dealerships to act in HMA and
18 KMA's stead to provide repairs under the warranties HMA and KMA provide
19 directly to consumers. Accordingly, discovery will show, particularly the
20 dealership agreements between Defendant HMA and KMA and third-party
21 dealerships, that Defendants HMA and KMA have authorized these dealerships to
22 be their agents for the purposes of warranty repairs, including diagnosis of
23 whether warranty repairs are required, and as such, the consumers are third-party
24 beneficiaries of these dealership agreements because they benefit from being able
25 to purchase and receive warranty repairs locally. Discovery will show that
26 because Plaintiffs and members of the Class are third-party beneficiaries of the
27 dealership agreement which create an implied warranty of merchantability of the
28 goods being sold by these authorized dealerships, they may avail themselves of

1 the implied warranty against Defendants. This is true because third-party
2 beneficiaries to contracts between other parties that create an implied warranty of
3 merchantability may avail themselves of the implied warranty. *See In re Toyota*
4 *Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab.*
5 *Litig.*, 754 F. Supp. 2d 1145, 1185 (C.D. Cal. 2010).

6 148. Further, Plaintiffs and each of the members of the Class are the
7 intended beneficiaries of the express and implied warranties which accompany
8 each Class Vehicle. The dealers were not intended to be the ultimate consumers
9 of the Class Vehicles, and they have no rights under the warranty agreements
10 provided by HMA or KMA. These warranties were designed for and intended to
11 benefit the consumers only. The consumers are the true intended beneficiaries of
12 the express and implied warranties, and the consumers may therefore avail
13 themselves of those warranties.

14 149. HMA and KMA issued the express warranty to Plaintiffs and the
15 Class members. HMA and KMA also developed and disseminated the owner's
16 manuals and warranty booklets, in conjunction with HMC and KMC, which
17 direct consumers to take their vehicles to authorized dealerships for diagnosis and
18 repair. HMA and KMA also developed and disseminated the advertisements, in
19 conjunction with HMC and KMC, such as vehicle brochures and television
20 commercials, and other promotional materials relating to the Class Vehicles and
21 promoting the terms of the warranties that they issue with the sale of each Class
22 Vehicle. HMA and KMA are also responsible for the content of the Monroney
23 Stickers on their vehicles using information from HMC and KMC. These stickers
24 are also drafted in conjunction with HMC and KMC. Because they issue the
25 express warranties directly to the consumers, the consumers are in direct privity
26 with HMA and KMA with respect to the warranties.

27 150. In promoting, selling, and repairing their defective vehicles,
28 Defendants act through numerous authorized dealers who act as, and represent

1 themselves to the public as exclusive Kia and Hyundai representatives and agents,
2 particularly for the purpose of providing repairs that are the responsibility of
3 HMA and KMA to provide under their respective warranties. That the dealers act
4 as Defendants' agents for this purpose is demonstrated by the following facts:

5 (a) The authorized dealerships complete all service and repair
6 according to instructions disseminated directly to them by HMA and/or
7 KMA, including service manuals, technical service bulletins ("TSBs"),
8 technical tips ("TT"), and other documents drafted with HMC and/or
9 KMC;

10 (b) Technicians at Defendants dealerships are required to go to at
11 least yearly KMA and HMA-given trainings in order to remain certified to
12 work on Kia and Hyundai-branded vehicles, at which they receive training
13 on proprietary systems, which provides guided, step-by-step instructions
14 on diagnosing and repairing Kia and Hyundai-branded vehicles;

15 (c) Consumers are able to receive services under Kia and
16 Hyundai's issued New Vehicle Limited Warranties only at authorized
17 dealerships, and they are able to receive these services because of the
18 agreements between HMA and KMA and the authorized dealers. These
19 agreements provide HMA and/or KMA with a significant amount of
20 control over the actions of the authorized dealerships;

21 (d) The warranties provided by HMA and/or KMA for the
22 defective vehicles direct consumers to take their vehicles to authorized
23 dealerships for repairs or services;

24 (e) HMA and KMA control the way in which their authorized
25 dealers can respond to complaints and inquiries concerning defective
26 vehicles, and the dealerships are able to perform repairs under warranty
27 only with HMA or KMA's authorization;

28 (f) HMA and KMA have entered into agreements and

1 understandings with their authorized dealers pursuant to which they
2 authorize and exercise substantial control over the operations of their
3 dealers and the dealers' interaction with the public, particularly the
4 advertising of the Class Vehicles, specifically the terms and conditions of
5 the express warranties, as well as how consumers may avail themselves of
6 the remedies under those express warranties; and

7 (g) HMA and KMA implemented their express and implied
8 warranties as they relate to the defects alleged herein by instructing
9 authorized Kia and Hyundai dealerships to address complaints of the
10 Defect by prescribing and implementing the relevant TSBs cited herein.

11 151. Indeed, HMA's and KMA's warranty booklets make it abundantly
12 clear that only their authorized dealerships are their agents for warranty service.
13 The booklets, which are plainly written for the consumers, not the dealerships,
14 tell consumers that to obtain warranty service, "You must take your Kia Vehicle,
15 along with this manual, to an Authorized Kia Dealer in the United States during
16 its normal service hours.," (Kia Warranty); and "[w]arranty service will be
17 provided by an authorized Hyundai Dealership without charge for parts or
18 labor." (Hyundai Warranty).

19 152. Accordingly, as the above paragraphs demonstrate, the authorized
20 dealerships are agents of HMA or KMA for the purposes of the warranties, which
21 are direct contracts between HMA, KMA, and the purchasers of their branded
22 vehicles. Plaintiffs and each of the members of the Class have had sufficient
23 direct dealings with either HMA, KMA, or their agent dealerships to establish
24 privity of contract between HMA or KMA, on one hand, and Plaintiffs and each
25 of the members of the Class, on the other hand. This establishes privity with
26 respect to the express and implied warranty between Plaintiffs and Defendants. It
27 also establishes that Plaintiffs were dealing with HMA and KMA through their
28 authorized agent dealerships when they were given the New Vehicle Limited

1 Warranty associated with their vehicles, without any ability to negotiate the terms
2 of that Warranty.

3 **Defendants' Warranties were Unconscionable**

4 153. Plaintiffs signed contracts for sale with Defendants' authorized
5 dealers, and with that sale, was presented with a separate Warranty as drafted by
6 KMA and/or HMA. While Plaintiffs have some ability to negotiate price of the
7 vehicle, they have no ability to negotiate the terms of the Warranty. Plaintiffs had
8 no bargaining power with respect to the Warranty, were presented with it as a *fait*
9 *accompli*, and had to accept it in the exact form in which it was presented to
10 them, which occurred after the vehicle purchase transaction was completed.
11 Plaintiffs had no meaningful choice regarding any aspect of the Warranty or its
12 terms, including durational limitations of time and mileage. The terms of the
13 warranty unreasonably favored HMA or KMA over Plaintiffs and the members of
14 the Class; a gross disparity in bargaining power existed as between HMA and
15 KMA and Class members; and HMA and KMA knew or should have known that
16 the Headlight Defect would manifest in the Class Vehicles both before and after
17 the Warranty, thereby rendering the time and mileage limitations insufficient,
18 inadequate, and unconscionable.

19 154. HMA and KMA drafted the terms of the Warranty in part by using
20 their exclusive, superior knowledge of the existence and likely manifestation of
21 the Defect. Plaintiffs and Class Members were entirely ignorant of the Defect
22 when purchasing their Vehicles and when presented with the Warranty. Plaintiffs'
23 acceptance of the Warranty and its terms, including any disclaimers or durational
24 limits, was neither knowing nor voluntary. HMA and KMA knew or should have
25 known at the time of sale that the Class Vehicles were defective and would fail
26 prematurely solely because of a defect in design, materials, and workmanship, to
27 wit, the Headlight Defect. Plaintiffs and Class Members, on the other hand, had
28 no notice of or ability to detect the Defect prior to purchasing the Class Vehicles.

1 For this reason, the terms of the Warranty unreasonably favored HMA and KMA
2 over Plaintiffs and Class Members, and Plaintiffs' and Class Members'
3 acceptance of the Warranty's durational limitations, to the extent they are found to
4 apply so as to exclude instances where the Defect manifested outside of them,
5 was neither knowing nor voluntary, thereby rendering such limitation
6 unconscionable and ineffective.

7 155. Defendants' exclusive superior knowledge of the existence of the
8 Defect and when it would manifest influenced its analysis of the Defect and
9 whether it should pay for a recall (*i.e.*, if a defect is more likely to manifest within
10 the durational limits, a recall is only fractionally more expensive than warranty
11 repairs; if it is more likely to manifest outside those limits, a recall is
12 exponentially more expensive than warranty repairs.)

13 156. Plaintiffs were also not aware and could not have been aware that
14 HMA and KMA would willfully not inform them of the Defect which affects the
15 safety of their vehicles and that the Defect could manifest outside of the
16 durational limit of the Warranty, despite Defendants' knowledge of this. *See*
17 *Carlson v. Gen. Motors Corp.*, 883 F.2d 287 (4th Cir. 1989), cert. denied, 495
18 U.S. 904 (1990) (““proof that GM knew of and failed to disclose major, inherent
19 product defects would obviously suggest that its imposition of the challenged
20 ‘durational limitations’ on implied warranties constituted ‘overreaching,’ and that
21 the disclaimers themselves were therefore ‘unconscionable.’”)

22 **TOLLING OF THE STATUTES OF LIMITATIONS**

23 157. Any applicable statute of limitations has been tolled by Defendants'
24 knowing and active concealment of the Headlight Defect and misrepresentations
25 and omissions alleged herein. Through no fault or lack of diligence, Plaintiffs and
26 members of the Class were deceived regarding the Class Vehicles and could not
27 reasonably discover the Defect or Defendants' deception with respect to the
28 Defect. Defendants and their agents continue to deny the existence and extent of

1 the Defect, even when questioned by Plaintiffs and members of the Class.

2 158. Plaintiffs and members of the Class did not discover and did not
3 know of any facts that would have caused a reasonable person to suspect that
4 Defendants were concealing a defect and/or the Class Vehicles contained the
5 Headlight Defect and the corresponding safety risk. As alleged herein, the
6 existence of the Headlight Defect was material to Plaintiffs and members of the
7 Class at all relevant times. Within the time period of any applicable statutes of
8 limitations, Plaintiffs and members of the Class could not have discovered
9 through the exercise of reasonable diligence the existence of the Defect or that the
10 Defendants were concealing the Defect.

11 159. At all times, Defendants are and were under a continuous duty to
12 disclose to Plaintiffs and members of the Class the true standard, quality, and
13 grade of the Class Vehicles and to disclose the Headlight Defect and
14 corresponding safety risk due to their exclusive and superior knowledge of the
15 existence and extent of the Headlight in Class Vehicles.

16 160. Defendants knowingly, actively, and affirmatively concealed the
17 facts alleged herein. Plaintiffs and members of the Class reasonably relied on
18 Defendants' knowing, active, and affirmative concealment.

19 161. For these reasons, all applicable statutes of limitation have been
20 tolled based on the discovery rule and Defendants' fraudulent concealment, and
21 Defendants are estopped from relying on any statutes of limitations in defense of
22 this action.

23 **CLASS ACTION ALLEGATIONS**

24 162. Plaintiffs bring this lawsuit as a class action on behalf of themselves
25 and all others similarly situated as members of the proposed Class pursuant to
26 Federal Rules of Civil Procedure 23(a) and 23(b)(3). This action satisfies the
27 numerosity, commonality, typicality, adequacy, predominance, and superiority
28 requirements of those provisions.

163. The Class and Sub-Classes are defined as:

Class: All persons and entities in the United States who purchased or leased a Class Vehicle (the “Nationwide Class” or “Class”).

Illinois Sub-Class: All persons and entities who purchased or leased a Class Vehicle in the State of Illinois.

Maryland Sub-Class: All persons and entities who purchased or leased a Class Vehicle in the State of Maryland.

Minnesota Sub-Class: All persons and entities who purchased or leased a Class Vehicle in the State of Minnesota.

South Carolina Sub-Class: All persons and entities who purchased or leased a Class Vehicle in the State of South Carolina.

164. Excluded from the Class and Sub-Classes are: (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge’s staff; (3) any Judge sitting in the presiding state and/or federal court system who may hear an appeal of any judgment entered; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiffs reserves the right to amend the Class and Sub-Class definitions if discovery and further investigation reveal that the Class and Sub-Classes should be expanded or otherwise modified.

165. **Numerosity:** Although the exact number of Class Members is uncertain, and can only be ascertained through appropriate discovery, the number is significant enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. The Class Members are readily identifiable from information and records in Defendants’ possession, custody, or control, as well as from records kept by the Department of Motor Vehicles.

1 166. Typicality: Plaintiffs' claims are typical of the claims of the Class
2 in that Plaintiffs, like all Class Members, purchased or leased a Class Vehicle
3 designed, manufactured, and distributed by Defendants. The representative
4 Plaintiffs, like all Class Members, has been damaged by Defendants' misconduct
5 in that they have incurred or will incur the cost of repairing or replacing the
6 defective Headlight and/or its components. Furthermore, the factual bases of
7 Defendants' misconduct are common to all Class Members and represent a
8 common thread resulting in injury to the Class.

9 167. Commonality: There are numerous questions of law and fact
10 common to Plaintiffs and the Class that predominate over any question affecting
11 Class Members individually. These common legal and factual issues include the
12 following:

- 13 (a) Whether Class Vehicles suffer from defects relating to the
14 Headlight;
- 15 (b) Whether the defects relating to the Headlight constitute an
16 unreasonable safety risk;
- 17 (c) Whether Defendants knew about the defects pertaining to the
18 Headlight and, if so, how long Defendants have known of the
19 defect;
- 20 (d) Whether the defective nature of the Headlight constitutes a
21 material fact;
- 22 (e) Whether Defendants have had an ongoing duty to disclose the
23 defective nature of the Headlight to Plaintiffs and Class Members;
- 24 (f) Whether Plaintiffs and the other Class Members are entitled
25 to equitable relief, including a preliminary and/or a permanent
26 injunction;
- 27 (g) Whether Defendants knew or reasonably should have known
28 of the defects pertaining to the Headlight before they sold and

1 leased Class Vehicles to Class Members;

2 (h) Whether Defendants should be declared financially
3 responsible for notifying the Class Members of problems with the
4 Class Vehicles and for the costs and expenses of repairing and
5 replacing the defective Headlight and/or its components;

6 (i) Whether Defendants are obligated to inform Class Members
7 of their right to seek reimbursement for having paid to diagnose,
8 repair, or replace their defective Headlight and/or its components;

9 (j) Whether Defendants breached the implied warranty of
10 merchantability pursuant to the Magnuson-Moss Warranty Act;

11 (k) Whether Defendants breached the implied warranty of
12 merchantability under Illinois, Maryland, Minnesota, and South
13 Carolina law;

14 (l) Whether Defendants breached their express warranties under
15 Illinois, Maryland, Minnesota, and South Carolina law; and

16 (m) Whether Defendants breached express warranties pursuant to
17 the Magnuson-Moss Warranty Act.

18 168. Adequate Representation: Plaintiffs will fairly and adequately
19 protect the interests of the Class Members. Plaintiffs has retained attorneys
20 experienced in the prosecution of class actions, including consumer and product
21 defect class actions, and Plaintiffs intends to vigorously prosecute this action.

22 169. Predominance and Superiority: Plaintiffs and Class Members have
23 all suffered, and will continue to suffer, harm and damages as a result of
24 Defendants' unlawful and wrongful conduct. A class action is superior to other
25 available methods for the fair and efficient adjudication of the controversy.
26 Absent a class action, most Class Members would likely find the cost of
27 litigating their claims prohibitively high and would therefore have no effective
28 remedy. Because of the relatively small size of the individual Class Members'

claims, it is likely that only a few Class Members could afford to seek legal redress for Defendants' misconduct. Absent a class action, Class Members will continue to incur damages, and Defendants' misconduct will continue unabated without remedy or relief. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that it will conserve the resources of the courts and the litigants and promote consistency and efficiency of adjudication.

FIRST CAUSE OF ACTION

Breach of Express Warranty

810 ILL. COMP. STAT. §§ 5/2-313 AND 5/2A-210

(On Behalf of the Illinois Sub-Class Against KMA)

170. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

171. Plaintiff Terri Sue Holliday ("Illinois Plaintiff") brings this count on behalf of herself and the Illinois Sub-Class against KMA.

172. KMA is and was at all relevant times a "merchant" with respect to motor vehicles under 810 Ill. Comp. Stat. §§ 5/2-104(1) and 5/2A-103(3), and a "seller" of motor vehicles under § 5/2-103(1)(d).

173. With respect to leases, KMA is and was at all relevant times a "lessor" of motor vehicles under 810 Ill. Comp. Stat. § 5/2A-103(1)(p).

174. The Class Vehicles are and were at all relevant times "goods" within the meaning of 810 Ill. Comp. Stat. §§ 5/2-105(1) and 5/2A-103(1)(h).

175. The Headlights were manufactured and/or installed in the Class Vehicles by KMC and are covered by the express warranty issued by KMA.

176. KMA provided all purchasers and lessees of the Class Vehicles with the Kia express warranty described herein, which became a material part of the bargain.

177. KMA provided all purchasers and lessees of Kia-branded Class

1 Vehicles with the Kia Warranty.

2 178. KMA sold and leased the Class Vehicles with a written express
3 warranty covering the Vehicles for six years or 60,000 miles, whichever comes
4 first (Kia Warranty).

5 179. Kia's New Vehicle Limited Warranty expressly states that KMA
6 "warrants that it will arrange for an Authorized Kia dealer at locations of its
7 choice to provide for the repair of your vehicle if it fails to function properly
8 during normal use." The warranty further provides that "Authorized service
9 facilities will remedy such failures to function properly at Kia's expense[.]" (Kia
10 Warranty).

11 180. KMC designed, manufactured and/or installed the Headlights and
12 the Headlights' component parts in the Class Vehicles, and the Headlights and
13 their component parts are covered by the express Warranties issued by KMA.

14 181. The Headlight Defect at issue in this litigation was present at the
15 time the Class Vehicles were sold or leased to Illinois Plaintiff and the Illinois
16 Sub-Class Members.

17 182. Illinois Plaintiff and the Illinois Sub-Class Members relied on
18 KMA's express warranties, which were a material part of the bargain, when
19 purchasing or leasing their Class Vehicles.

20 183. Under the express Warranties, KMA was obligated to correct the
21 Headlight Defect in the vehicles owned or leased by Illinois Plaintiff and the
22 Illinois Sub-Class Members.

23 184. Although KMA were obligated to correct the Headlight Defect,
24 none of the attempted fixes to the Headlights are adequate under the terms of the
25 Warranties, as they did not cure the defect.

26 185. KMA breached the express Warranties by performing illusory
27 repairs. Rather than repairing the vehicles pursuant to the express Warranties,
28 KMA, via their authorized dealerships, falsely informed Illinois Sub-Class

1 Members that there was no problem with their Class Vehicles, performed
2 ineffective procedures, and/or replaced defective components in the Headlights
3 with equally defective components, without actually repairing the Class
4 Vehicles.

5 186. KMA and their agent dealers have failed and refused to conform the
6 Headlights to the express Warranties. Defendants' conduct, as discussed
7 throughout this Complaint, has voided any attempt on their part to disclaim
8 liability for their actions.

9 187. Moreover, KMA's attempt to disclaim or limit these express
10 Warranties vis-à-vis consumers is unconscionable and unenforceable under the
11 circumstances here. Specifically, KMA's warranty limitation is unenforceable
12 because it knowingly sold a defective product without informing consumers
13 about the defect.

14 188. The time limits contained in KMA's warranty period were also
15 unconscionable and inadequate to protect Illinois Plaintiff and the Illinois Sub-
16 Class Members. Among other things, Illinois Plaintiff and the Illinois Sub-Class
17 Members had no meaningful choice in determining these time limitations, the
18 terms of which unreasonably favored KMA. A gross disparity in bargaining
19 power existed between KMA and the Class members, and KMA knew or should
20 have known that the Class Vehicles were defective at the time of sale.

21 189. Illinois Plaintiff and the Illinois Sub-Class Members have complied
22 with all obligations under the Warranties, or otherwise have been excused from
23 performance of said obligations as a result of Defendants' conduct described
24 herein.

25 190. Illinois Plaintiff and the Illinois Sub-Class Members were not
26 required to notify KMA of the breach because affording KMA a reasonable
27 opportunity to cure their breach of written warranty would have been futile.
28 KMA was also on notice of the Headlight Defect from the complaints and

1 service requests they received from Plaintiffs and the Class Members, from
 2 repairs and/or replacements of the Headlights or components thereof, and
 3 through other internal and external sources as described herein. Regardless,
 4 Illinois Plaintiff informed KMA of its breaches of express warranty via letter
 5 dated February 28, 2023.

6 191. Because KMA, through its conduct and exemplified by their own
 7 service bulletins, have covered repairs of the Headlight Defect if KMA
 8 determine the repairs are appropriately covered under the Warranties, KMA
 9 cannot now deny that the Warranties cover the Headlight Defect.

10 192. Because KMA has not been able to remedy the Headlight Defect,
 11 any limitation on remedies included in the Warranties causes the Warranties to
 12 fail their essential purposes, rendering them null and void.

13 193. As a direct and proximate cause of KMA's breach, Illinois Plaintiff
 14 and the Illinois Sub-Class Members suffered damages and continue to suffer
 15 damages, including economic damages at the point of sale or lease and
 16 diminution of value of their Class Vehicles. Additionally, Illinois Plaintiff and
 17 the Illinois Sub-Class Members have incurred or will incur economic damages at
 18 the point of repair in the form of the cost of repair.

19 194. As a direct and proximate result of KMA's breach of express
 20 warranties, Illinois Plaintiff and the Illinois Sub-Class Members have been
 21 damaged in an amount to be determined at trial.

22 **SECOND CAUSE OF ACTION**

23 **Breach of the Implied Warranty of Merchantability**

24 **810 ILL. COMP. STAT. §§ 5/2-314 and 5/2A-212**

25 **(On Behalf of the Illinois Sub-Class Against KMA and KMC)**

26 195. Plaintiffs incorporate by reference the allegations contained in the
 27 preceding paragraphs of this Complaint.

28 196. Illinois Plaintiff brings this count on behalf of herself and the

1 Illinois Sub-Class against KMA and KMC (“Defendants” for the purposes of this
2 Cause of Action).

3 197. Defendants are and were at all relevant times “merchants” with
4 respect to motor vehicles under 810 Ill. Comp. Stat. §§ 5/2-104(1) and 5/2A-
5 103(3), and “sellers” of motor vehicles under § 5/2-103(1)(d).

6 198. With respect to leases, Defendants were and are at all relevant times
7 “lessors” of motor vehicles under 810 Ill. Comp. Stat. § 5/2A-103(1)(p).

8 199. The Class Vehicles are and were at all relevant times “goods” within
9 the meaning of 810 Ill. Comp. Stat. §§ 5/2-105(1) and 5/2A-103(1)(h).

10 200. A warranty that the Class Vehicles were in merchantable condition
11 and fit for the ordinary purpose for which vehicles are used is implied by law
12 under 810 Ill. Comp. Stat. §§ 5/2-314 and 5/2A-212.

13 201. Defendants knew or had reason to know of the specific use for
14 which the Class Vehicles were purchased or leased. Defendants directly sold and
15 marketed Class Vehicles to customers through authorized dealers, like those
16 from whom Illinois Plaintiff and members of the Illinois Sub-Class bought or
17 leased their vehicles, for the intended purpose of consumers purchasing the
18 vehicles. Defendants knew that the Class Vehicles would and did pass
19 unchanged from the authorized dealers to Illinois Plaintiff and members of the
20 Illinois Sub-Class, with no modification to the defective Class Vehicles.

21 202. Defendants provided Illinois Plaintiff and members of the Illinois
22 Sub-Class with an implied warranty that the Class Vehicles and their
23 components and parts are merchantable and fit for the ordinary purposes for
24 which they were sold. However, the Class Vehicles are not fit for their ordinary
25 purpose of providing reasonably reliable and safe transportation because, inter
26 alia, the Class Vehicles and their Headlights suffered from an inherent defect at
27 the time of sale and thereafter and are not fit for their particular purpose of
28 providing safe and reliable transportation.

1 203. This implied warranty included, among other things: (i) a warranty
2 that the Class Vehicles that were manufactured, supplied, distributed, and/or sold
3 by Defendants were safe and reliable for providing transportation; and (ii) a
4 warranty that the Class Vehicles would be fit for their intended use while the
5 Class Vehicles were being operated.

6 204. Contrary to the applicable implied warranties, the Class Vehicles at
7 the time of sale and thereafter were not fit for their ordinary and intended
8 purpose of providing Plaintiffs and Class Members with reliable, durable, and
9 safe transportation. Instead, the Class Vehicles were and are defective at the time
10 of sale or lease and thereafter as more fully described above. Defendants knew of
11 this defect at the time these sale or lease transactions occurred as described
12 herein.

13 205. As a result of Defendants' breach of the applicable implied
14 warranties, Illinois Plaintiff and members of the Illinois Sub-Class suffered an
15 ascertainable loss of money, property, and/or value of their Class Vehicles.
16 Additionally, as a result of the Headlight Defect, Illinois Plaintiff and members
17 of the Illinois Sub-Class were harmed and suffered actual damages in that the
18 Class Vehicles are substantially certain to fail before their expected useful life
19 has run.

20 206. Defendants' actions, as complained of herein, breached the implied
21 warranty that the Class Vehicles were of merchantable quality and fit for such
22 use in violation of the Uniform Commercial Code and relevant state law.

23 207. Illinois Plaintiff and members of the Illinois Sub-Class have
24 complied with all obligations under the warranty, or otherwise have been
25 excused from performance of said obligations as a result of Defendants' conduct
26 described herein.

27 208. Privity is not required here because Illinois Plaintiff and members of
28 the Illinois Sub-Class are intended third-party beneficiaries of contracts between

1 Defendants and its distributors and dealers, and specifically, of KMA's express
2 Warranties and any warranties provided with certified pre-owned vehicles. The
3 dealers were not intended to be the ultimate consumers of the Class Vehicles and
4 have rights under the warranty agreements provided with the Class Vehicles; the
5 warranty agreements were designed for and intended to benefit the consumer
6 only.

7 209. Illinois Plaintiff and members of the Illinois Sub-Class were not
8 required to notify Defendants of the breach because affording Defendants a
9 reasonable opportunity to cure its breach of warranty would have been futile.
10 Defendants was also on notice of the Headlight Defect from the complaints and
11 service requests they received from Illinois Plaintiff and the Class Members and
12 through other internal sources as described herein

13 210. Nonetheless, Illinois Plaintiff and members of the Illinois Sub-Class
14 provided notice to Defendants of the breach of implied warranties when they
15 took their vehicles to KMA's-authorized provider of warranty repairs. Illinois
16 Plaintiff also provided notice to Defendants of its breach of implied warranty by
17 letter dated February 28, 2023.

18 211. As a direct and proximate cause of Defendants' breach, Illinois
19 Plaintiff and members of the Illinois Sub-Class suffered damages and continue to
20 suffer damages, including economic damages at the point of sale or lease and
21 diminution of value of their Class Vehicles. Additionally, Illinois Plaintiff and
22 members of the Illinois Sub-Class have incurred or will incur economic damages
23 at the point of repair in the form of the cost of repair as well as additional losses.

24 212. As a direct and proximate result of Defendants' breach of the
25 implied warranty of merchantability, Illinois Plaintiff and members of the Illinois
26 Sub-Class have been damaged in an amount to be proven at trial.

27
28

THIRD CAUSE OF ACTION

Violations of the Illinois Consumer Fraud and

Deceptive Business Practices Act

815 ILCS 505/1, *et seq.*

(On Behalf of the Illinois Sub-Class Against KMA and KMC)

213. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

214. Illinois Plaintiff brings this cause of action on behalf of herself and on behalf of the members of the Illinois Sub-Class against KMA and KMC ("Defendants" for the purposes of this Cause of Action.

215. Defendants are "persons" as that term is defined in 815 ILCS 505/1(c).

216. Illinois Plaintiff and the Illinois Sub-Class members are "consumers" as that term is defined in 815 ILCS 505/1(e).

217. The Illinois Consumer Fraud and Deceptive Business Practices Act ("Illinois CFA") prohibits "unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression, or omission of any material fact, with intent that others rely upon the concealment, suppression, or omission of such material fact ... in the conduct of trade or commerce ... whether any person has in fact been misled, deceived or damaged thereby." 815 ILCS 505/2. Defendants engaged in unlawful trade practices, and unfair or deceptive acts or practices that violated the Illinois CFA.

218. Defendants participated in unfair or deceptive trade practices that violated the Illinois CFA. As described below and alleged throughout the Complaint, by failing to disclose the Headlight Defect, by concealing the Headlight Defect, by marketing their vehicles as safe, reliable, well-engineered, and of high quality, and by presenting themselves as reputable manufacturers

1 that valued safety, performance and reliability, and stood behind its vehicles
2 after they were sold, Defendants knowingly and intentionally misrepresented and
3 omitted material facts in connection with the sale or lease of the Class Vehicles.
4 Defendants systematically misrepresented, concealed, suppressed, or omitted
5 material facts relating to the Class Vehicles and the Headlight Defect in the
6 course of their business.

7 219. Defendants also engaged in unlawful trade practices by employing
8 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
9 suppression, or omission of any material fact with intent that others rely upon
10 such concealment, suppression, or omission, in connection with the sale of the
11 Class Vehicles.

12 220. Defendants' unfair and deceptive acts or practices occurred
13 repeatedly in Defendants' trade or business, were capable of deceiving a
14 substantial portion of the purchasing public and imposed a serious safety risk on
15 the public.

16 221. Defendants knew that the Class Vehicles suffered from an inherent
17 defect, were defectively designed and/or manufactured, and were not suitable for
18 their intended use.

19 222. Defendants knew or should have known that their conduct violated
20 the Illinois CFA.

21 223. Defendant was under a duty to Illinois Plaintiff and the Illinois Sub-
22 Class Members to disclose the defective nature of the Class Vehicles because:

23 a) Defendants were in a superior position to know the true state
24 of facts about the safety defect in the Class Vehicles;

25 b) Defendants made partial disclosures about the quality of the
26 Class Vehicles without revealing the defective nature of the Class Vehicles; and

27 c) Defendants actively concealed the defective nature of the Class
28 Vehicles from Illinois Plaintiff and the Illinois Sub-Class Members at the time of

1 sale and thereafter.

2 224. By failing to disclose the Headlight Defect, Defendants knowingly
3 and intentionally concealed material facts and breached their duty not to do so.

4 225. The facts concealed or not disclosed by Defendants to Illinois
5 Plaintiff and the Illinois Sub-Class Members are material because a reasonable
6 person would have considered them to be important in deciding whether or not to
7 purchase or lease Defendants' Class Vehicles, or to pay less for them. Had Illinois
8 Plaintiff and the Illinois Sub-Class Members known that the Class Vehicles
9 suffered from the Headlight Defect described herein, they would not have
10 purchased or leased the Class Vehicles or would have paid less for them.

11 226. Illinois Plaintiff and the Illinois Sub-Class Members are reasonable
12 consumers who do not expect that their vehicles will suffer from the Headlight
13 Defect. That is the reasonable and objective consumer expectation for vehicles.

14 227. As a result of Defendants' misconduct, Illinois Plaintiff and the
15 Illinois Sub-Class Members have been harmed and have suffered actual damages
16 in that the Class Vehicles are defective and require repairs or replacement.

17 228. As a direct and proximate result of Defendants' unfair or deceptive
18 acts or practices, Illinois Plaintiff and the Illinois Sub-Class Members have
19 suffered and will continue to suffer actual damages.

20 229. Defendants' violations present a continuing risk to Illinois Plaintiff
21 and the Illinois Sub-Class Members as well as to the general public. Defendants'
22 unlawful acts and practices complained of herein affect the public interest.

23 230. Illinois Plaintiff provided notice of her claims to Defendants by
24 letter dated February 28, 2023.

25 231. Pursuant to 815 ILCS 505/10a(a), Illinois Plaintiff and the Illinois
26 Sub-Class Members seek monetary relief against Defendants in the amount of
27 actual damages, as well as punitive damages because Defendants acted with fraud
28 and/or malice and/or were grossly negligent.

232. Illinois Plaintiff and the Illinois Sub-Class Members also seek attorneys' fees, and any other just and proper relief available under 815 Ill. Comp. Stat. § 505/1, *et seq.*

FOURTH CAUSE OF ACTION

Breach of Express Warranty

Md. Com. Law §§ 2-313 and 2A-210

(On Behalf of the Maryland Sub-Class Against HMA)

233. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

234. Plaintiff Alma Jones (“Maryland Plaintiff”) brings this count on behalf of herself and the Maryland Sub-Class against Defendant HMA.

235. HMA is and was at all relevant times “merchants” with respect to motor vehicles under Md. Com. Law §§ 2-104(1) and 2A-103(3), and “sellers” of motor vehicles under § 2-103(1)(d).

236. With respect to leases, HMA is and was at all relevant times “lessors” of motor vehicles under Md. Com. Law § 2A-103(1)(p).

237. The Class Vehicles are and were at all relevant times “goods” within the meaning of Md. Com. Law §§ 2-105(1) and 2A-103(1)(h).

238. HMA provided all purchasers and lessees of the Class Vehicles with the express warranty described herein, which became a material part of the bargain.

239. HMA provided all purchasers and lessees of Hyundai-branded Class Vehicles with the Hyundai Warranty.

240. HMA sold and leased the Class Vehicles with a written express warranty covering the Vehicles five years or 60,000 miles, whichever comes first (Hyundai Warranty).

241. Hyundai’s New Vehicle Limited Warranty expressly states that Hyundai covers “repair or replacement of any component originally

1 manufactured or installed by Hyundai Motor Company, Hyundai Motor Group,
2 Hyundai Motor Manufacturing Alabama, Kia Manufacturing Mexico, Kia
3 Motors Manufacturing Georgia or Hyundai Motor America that is found to be
4 defective in material or workmanship, under normal use and maintenance[.]” The
5 warranty further provides that “Warranty service will be provided by an
6 authorized Hyundai dealership without charge for parts or labor.” (Hyundai
7 Warranty).

8 242. HMC designed, manufactured and/or installed the Headlights and
9 the Headlights’ component parts in the Class Vehicles, and the Headlights and
10 their component parts are covered by the express Warranties issued by HMA.

11 243. The Headlight Defect at issue in this litigation was present at the
12 time the Class Vehicles were sold or leased to Maryland Plaintiff and the
13 Maryland Sub-Class Members.

14 244. Maryland Plaintiff and the Maryland Sub-Class Members relied on
15 HMA’s express warranties, which were a material part of the bargain, when
16 purchasing or leasing their Class Vehicles.

17 245. Under the express Warranties, HMA was obligated to correct the
18 Headlight Defect in the vehicles owned or leased by Maryland Plaintiff and the
19 Maryland Sub-Class Members.

20 246. Although HMA was obligated to correct the Headlight Defect, none
21 of the attempted fixes to the Headlights are adequate under the terms of the
22 Warranties, as they did not cure the defect.

23 247. HMA breached the express Warranties by performing illusory
24 repairs via its authorized dealerships. Rather than repairing the vehicles pursuant
25 to the express Warranties, HMA, via its authorized dealerships, falsely informed
26 Maryland Sub-Class Members that there was no problem with their Class
27 Vehicles, performed ineffective procedures, and/or replaced defective
28 components in the Headlights with equally defective components, without

1 actually repairing the Class Vehicles.

2 248. HMA and its agent dealers have failed and refused to conform the
3 Headlights to the express Warranties. Defendants' conduct, as discussed
4 throughout this Complaint, has voided any attempt on their part to disclaim
5 liability for their actions.

6 249. Moreover, HMA's attempt to disclaim or limit these express
7 Warranties vis-à-vis consumers is unconscionable and unenforceable under the
8 circumstances here. Specifically, HMA's warranty limitation is unenforceable
9 because it knowingly sold a defective product without informing consumers
10 about the defect.

11 250. The time limits contained in HMA's warranty period were also
12 unconscionable and inadequate to protect Maryland Plaintiff and the Maryland
13 Sub-Class Members. Among other things, Maryland Plaintiff and the Maryland
14 Sub-Class Members had no meaningful choice in determining these time
15 limitations, the terms of which unreasonably favored HMA. A gross disparity in
16 bargaining power existed between HMA and the Class members, and HMA
17 knew or should have known that the Class Vehicles were defective at the time of
18 sale.

19 251. Maryland Plaintiff and the Maryland Sub-Class Members have
20 complied with all obligations under the Warranties, or otherwise have been
21 excused from performance of said obligations as a result of HMA's conduct
22 described herein.

23 252. Maryland Plaintiff and the Maryland Sub-Class Members were not
24 required to notify HMA of the breach because affording HMA a reasonable
25 opportunity to cure their breach of written warranty would have been futile.
26 HMA was also on notice of the Headlight Defect from the complaints and
27 service requests they received from Plaintiffs and the Class Members, from
28 repairs and/or replacements of the Headlights or components thereof, and

1 through other internal and external sources as described herein. Regardless,
 2 Maryland Plaintiff provided notice to HMA of its breach of express warranty via
 3 letter dated January 25, 2023.

4 253. Because HMA, through their conduct and exemplified by their own
 5 service bulletins, have covered repairs of the Headlight Defect if HMA
 6 determine the repairs are appropriately covered under the Warranties, HMA
 7 cannot now deny that the Warranties cover the Headlight Defect.

8 254. Because HMA have not been able to remedy the Headlight Defect,
 9 any limitation on remedies included in the Warranties causes the Warranties to
 10 fail their essential purposes, rendering them null and void.

11 255. As a direct and proximate cause of HMA's breach, Maryland
 12 Plaintiff and the Maryland Sub-Class Members suffered damages and continue to
 13 suffer damages, including economic damages at the point of sale or lease and
 14 diminution of value of their Class Vehicles. Additionally, Maryland Plaintiff and
 15 the Maryland Sub-Class Members have incurred or will incur economic damages
 16 at the point of repair in the form of the cost of repair.

17 256. As a direct and proximate result of HMA's breach of express
 18 warranties, Maryland Plaintiff and the Maryland Sub-Class Members have been
 19 damaged in an amount to be determined at trial.

20 **FIFTH CAUSE OF ACTION**

21 **Breach of the Implied Warranty of Merchantability**

22 **Md. Com. Law §§ 2-314 and 2A-212**

23 **(On Behalf of the Maryland Sub-Class Against HMA and HMC)**

24 257. Plaintiffs incorporate by reference the allegations contained in the
 25 preceding paragraphs of this Complaint.

26 258. Maryland Plaintiff brings this count on behalf of herself and the
 27 Maryland Sub-Class against Defendants HMA and HMC ("Defendants" for the
 28 purposes of this Cause of Action).

1 259. Defendants are and were at all relevant times “merchants” with
2 respect to motor vehicles under Md. Com. Law §§ 2-104(1) and 2A-103(3), and
3 “sellers” of motor vehicles under § 2-103(1)(d).

4 260. With respect to leases, Defendants are and were at all relevant times
5 “lessors” of motor vehicles under Md. Com. Law § 2A-103(1)(p).

6 261. The Class Vehicles are and were at all relevant times “goods” within
7 the meaning of Md. Com. Law §§ 2-105(1) and 2A-103(1)(h).

8 262. A warranty that the Class Vehicles were in merchantable condition
9 and fit for the ordinary purpose for which vehicles are used is implied by law
10 under Md. Com. Law §§ 2-314 and 2A-212.

11 263. Defendants knew or had reason to know of the specific use for which
12 the Class Vehicles were purchased or leased. Defendants directly sold and
13 marketed Class Vehicles to customers through HMA’s authorized dealers, like
14 those from whom Maryland Plaintiff and members of the Maryland Sub-Class
15 bought or leased their vehicles, for the intended purpose of consumers purchasing
16 the vehicles. Defendants knew that the Class Vehicles would and did pass
17 unchanged from the authorized dealers to Maryland Plaintiff and members of the
18 Maryland Sub-Class, with no modification to the defective Class Vehicles.

19 264. Defendants provided Maryland Plaintiff and members of the
20 Maryland Sub-Class with an implied warranty that the Class Vehicles and their
21 components and parts are merchantable and fit for the ordinary purposes for which
22 they were sold. However, the Class Vehicles are not fit for their ordinary purpose
23 of providing reasonably reliable and safe transportation because, inter alia, the
24 Class Vehicles and their Headlights suffered from an inherent defect at the time of
25 sale and thereafter and are not fit for their particular purpose of providing safe and
26 reliable transportation.

27 265. This implied warranty included, among other things: (i) a warranty
28 that the Class Vehicles that were manufactured, supplied, distributed, and/or sold

1 by Defendants were safe and reliable for providing transportation; and (ii) a
2 warranty that the Class Vehicles would be fit for their intended use while the Class
3 Vehicles were being operated.

4 266. Contrary to the applicable implied warranties, the Class Vehicles at
5 the time of sale and thereafter were not fit for their ordinary and intended purpose
6 of providing Plaintiffs and Class Members with reliable, durable, and safe
7 transportation. Instead, the Class Vehicles were and are defective at the time of
8 sale or lease and thereafter as more fully described above. Defendants knew of this
9 defect at the time these sale or lease transactions occurred.

10 267. As a result of Defendants' breach of the applicable implied
11 warranties, Maryland Plaintiff and members of the Maryland Sub-Class suffered
12 an ascertainable loss of money, property, and/or value of their Class Vehicles.
13 Additionally, as a result of the Headlight Defect, Maryland Plaintiff and members
14 of the Maryland Sub-Class were harmed and suffered actual damages in that the
15 Class Vehicles are substantially certain to fail before their expected useful life has
16 run.

17 268. Defendants' actions, as complained of herein, breached the implied
18 warranty that the Class Vehicles were of merchantable quality and fit for such use
19 in violation of the Uniform Commercial Code and relevant state law.

20 269. Maryland Plaintiff and members of the Maryland Sub-Class have
21 complied with all obligations under the warranty, or otherwise have been excused
22 from performance of said obligations as a result of Defendants' conduct described
23 herein.

24 270. Privity is not required here because Maryland Plaintiff and members
25 of the Maryland Sub-Class are intended third-party beneficiaries of contracts
26 between Defendants and their distributors and dealers, and specifically, of HMA's
27 express warranties, including the Warranties and any warranties provided with
28 certified pre-owned vehicles. The dealers were not intended to be the ultimate

1 consumers of the Class Vehicles and have rights under the warranty agreements
2 provided with the Class Vehicles; the warranty agreements were designed for and
3 intended to benefit the consumer only.

4 271. Maryland Plaintiff and members of the Maryland Sub-Class were not
5 required to notify Defendants of the breach because affording Defendants a
6 reasonable opportunity to cure their breach of warranty would have been futile.
7 Defendants were also on notice of the Headlight Defect from the complaints and
8 service requests they received from Maryland Plaintiff and the Class Members and
9 through other internal sources as described herein.

10 272. Nonetheless, Maryland Plaintiff and members of the Maryland Sub-
11 Class provided notice to Defendants of the breach of express warranties when they
12 took their vehicles to Defendants-authorized provider of warranty repairs.
13 Maryland Plaintiff also provided notice to Defendants of their breach of implied
14 warranty by letter dated January 25, 2023.

15 273. As a direct and proximate cause of Defendants' breach, Maryland
16 Plaintiff and members of the Maryland Sub-Class suffered damages and continue
17 to suffer damages, including economic damages at the point of sale or lease and
18 diminution of value of their Class Vehicles. Additionally, Maryland Plaintiff and
19 members of the Maryland Sub-Class have incurred or will incur economic
20 damages at the point of repair in the form of the cost of repair as well as additional
21 losses.

22 274. As a direct and proximate result of Defendants' breach of the implied
23 warranty of merchantability, Maryland Plaintiff and members of the Maryland
24 Sub-Class have been damaged in an amount to be proven at trial.

25 **SIXTH CAUSE OF ACTION**

26 **Violations of the Maryland Consumer Protection Act,**

27 **Md. Code Ann., Com. Law § 13-101, *et seq.***

28 **(On Behalf of the Maryland Sub-Class Against HMA and HMC)**

1 275. Plaintiffs incorporate by reference the allegations contained in the
2 preceding paragraphs of this Complaint.

3 276. Maryland Plaintiff brings this cause of action on behalf of herself and
4 on behalf of the members of the Maryland Sub-Class against Defendants HMA
5 and HMC (“Defendants” for the purposes of this Cause of Action).

6 277. Defendants, Maryland Plaintiff, and the Maryland Sub-Class
7 Members are “persons” within the meaning of Md. Code Ann., Com. Law § 13-
8 101(h).

9 278. The Maryland Consumer Protection Act (“Maryland CPA”) provides
10 that a person may not engage in any unfair and deceptive trade practice in the sale
11 or lease of any consumer good, including representing that goods are of a
12 particular standard, quality, or grade if they are not, advertising goods without
13 intent to sell or lease them as advertised, selling goods knowing that a service,
14 replacement or repair was needed, “failure to state a material fact if the failure
15 deceives or tends to deceive,” and “[d]eception, fraud, false pretense, false
16 premise, misrepresentation, or knowing concealment, suppression, or omission of
17 any material fact with the intent that a consumer rely on the same,” Md. Code
18 Ann., Com. Law § 13-301, regardless of whether the consumer is actually
19 deceived or damaged, Md. Code Ann., Com. Law § 13-302. Defendants engaged
20 in unlawful trade practices, and unfair or deceptive acts or practices that violated
21 the Maryland CPA.

22 279. Defendants participated in unfair or deceptive trade practices that
23 violated the Maryland CPA. As described below and alleged throughout the
24 Complaint, by failing to disclose the Headlight Defect, by concealing the
25 Headlight Defect, by marketing their vehicles as safe, reliable, well-engineered,
26 and of high quality, and by presenting themselves as reputable manufacturers that
27 valued safety, performance and reliability, and stood behind their vehicles after
28 they were sold, Defendants knowingly and intentionally misrepresented and

1 omitted material facts in connection with the sale or lease of the Class Vehicles.
2 Defendants systematically misrepresented, concealed, suppressed, or omitted
3 material facts relating to the Class Vehicles and the Headlight Defect in the course
4 of their business.

5 280. Defendants also engaged in unlawful trade practices by employing
6 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
7 suppression, or omission of any material fact with intent that others rely upon such
8 concealment, suppression, or omission, in connection with the sale of the Class
9 Vehicles.

10 281. Defendants' unfair and deceptive acts or practices occurred
11 repeatedly in Defendants' trade or business, were capable of deceiving a
12 substantial portion of the purchasing public and imposed a serious safety risk on
13 the public.

14 282. Defendants knew that the Class Vehicles suffered from an inherent
15 defect, were defectively designed and/or manufactured, and were not suitable for
16 their intended use.

17 283. Defendants knew or should have known that their conduct violated
18 the Maryland CPA.

19 284. Defendants were under a duty to Maryland Plaintiff and the Maryland
20 Sub-Class Members to disclose the defective nature of the Class Vehicles because:

- 21 a. Defendants were in a superior position to know the true state of
22 facts about the safety defect in the Class Vehicles;
- 23 b. Defendants made partial disclosures about the quality of the
24 Class Vehicles without revealing the defective nature of the
25 Class Vehicles; and
- 26 c. Defendants actively concealed the defective nature of the Class
27 Vehicles from Maryland Plaintiff and the Maryland Sub-Class
28 Members at the time of sale and thereafter.

1 285. By failing to disclose the Headlight Defect, Defendants knowingly
2 and intentionally concealed material facts and breached their duty not to do so.

3 286. The facts concealed or not disclosed by Defendants to Maryland
4 Plaintiff and the Maryland Sub-Class Members are material because a reasonable
5 person would have considered them to be important in deciding whether or not to
6 purchase or lease Defendants' Class Vehicles, or to pay less for them. Whether a
7 vehicle's Headlight is defective is a material safety concern. Had Maryland
8 Plaintiff and the Maryland Sub-Class Members known that the Class Vehicles
9 suffered from the Headlight Defect described herein, they would not have
10 purchased or leased the Class Vehicles or would have paid less for them.

11 287. Maryland Plaintiff and the Maryland Sub-Class Members are
12 reasonable consumers who do not expect that their vehicles will suffer from the
13 Headlight Defect. That is the reasonable and objective consumer expectation for
14 vehicles.

15 288. As a result of Defendants' misconduct, Maryland Plaintiff and the
16 Maryland Sub-Class Members have been harmed and have suffered actual
17 damages in that the Class Vehicles are defective and require repairs or
18 replacement.

19 289. As a direct and proximate result of Defendants' unfair or deceptive
20 acts or practices, Maryland Plaintiff and the Maryland Sub-Class Members have
21 suffered and will continue to suffer actual damages.

22 290. Defendants' violations present a continuing risk to Maryland Plaintiff
23 and the Maryland Sub-Class Members as well as to the general public.
24 Defendants' unlawful acts and practices complained of herein affect the public
25 interest.

26 291. Maryland Plaintiff provided notice of her claims to Defendants by
27 letter dated January 25, 2023.
28

1 292. Pursuant to Md. Code Ann., Com. Law § 13-408, Maryland Plaintiff
2 and members of the Maryland Sub-Class seek monetary relief against Defendants
3 in the amount of actual damages, attorneys’ fees, and any other just and proper
4 relief available under the Maryland CPA.

5 **SEVENTH CAUSE OF ACTION**

6 **Violation of the Minnesota Prevention of Consumer Fraud Act,**

7 **Minn. Stat. § 325F.68, *et seq.***

8 **(On Behalf of the Minnesota Sub-Class Against HMA and HMC)**

9 293. Plaintiffs incorporate by reference the allegations contained in the
10 preceding paragraphs of this Complaint.

11 294. Plaintiff Maranda (“Minnesota Plaintiff”) brings this cause of action
12 individually and on behalf of the Minnesota Sub-Class against Defendants HMA
13 and HMC (“Defendants” for the purposes of this Cause of Action).

14 295. The Class Vehicles constitute “merchandise” within the meaning of
15 Minn. Stat. § 325F.68.

16 296. The Minnesota Prevention of Consumer Fraud Act (“Minnesota
17 CFA”) prohibits “[t]he act, use, or employment by any person of any fraud, false
18 pretense, false promise, misrepresentation, misleading statement or deceptive
19 practice, with the intent that others rely thereon in connection with the sale of
20 any merchandise, whether or not any person has in fact been misled, deceived, or
21 damaged thereby” Minn. Stat. § 3 25F.69(1). Defendants engaged in unfair
22 and deceptive practices that violated the Minnesota CFA as described above.

23 297. Defendants participated in and engaged in deceptive business or
24 trade practices prohibited by the Minnesota CFA by failing to disclose and
25 actively concealing that the Class Vehicles contained the Headlight Defect, by
26 marketing their Class Vehicles as safe and of high quality, and by presenting
27 themselves as reputable manufacturers that valued safety and stood behind their
28 vehicles after they were sold.

1 298. Defendants knowingly and intentionally misrepresented and omitted
2 material facts in connection with the sale or lease of the Class Vehicles by,
3 among other things, failing to disclose the Headlight Defect; concealing the
4 Headlight Defect; promoting and selling or leasing Class Vehicles they knew
5 were defective, including by marketing their vehicles as safe, reliable, easily
6 operable, efficient, and of high quality; presenting themselves as reputable
7 manufacturers that valued safety, reliability, performance and efficiency, and
8 stood behind their vehicles after they were sold; failing to make repairs or
9 making repairs and providing replacements that caused Minnesota Plaintiff and
10 the Minnesota Sub-Class Members to experience repeated instances of failure,
11 rendering the New Vehicle Limited Warranty useless; and minimizing the scope
12 and severity of the problems with the Class Vehicles, refusing to acknowledge
13 that they are defective, and failing to provide adequate relief to consumers.
14 Defendants misrepresented and omitted such material facts with the intent to
15 mislead Minnesota Plaintiff and the Minnesota Sub-Class Members about the
16 true nature of the Class Vehicles.

17 299. Defendants systematically misrepresented, concealed, suppressed, or
18 omitted material facts relating to the Class Vehicles and Headlight Defect in the
19 course of their business.

20 300. Defendants also engaged in unlawful trade practices by employing
21 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
22 suppression or omission of any material fact with intent that others rely upon
23 such concealment, suppression or omission, in connection with the sale of the
24 Class Vehicles.

25 301. Defendants' unfair and deceptive acts or practices occurred
26 repeatedly in Defendants' trade or business, were capable of deceiving a
27 substantial portion of the purchasing public, and imposed a serious safety risk on
28 the public.

1 302. Defendants knew that the Class Vehicles and their engines suffered
2 from an inherent defect, were defectively designed or manufactured, and were
3 not suitable for their intended use.

4 303. Defendants knew or should have known that their conduct violated
5 the Minnesota CFA.

6 304. Minnesota Plaintiff and the Minnesota Sub-Class Members
7 reasonably relied on Defendants' misrepresentations and omissions of material
8 facts in their advertisements of the Class Vehicles and in the purchase of the
9 Class Vehicles.

10 305. Minnesota Plaintiff and the Minnesota Sub-Class Members had no
11 way of discerning that Defendants' misrepresentations were false and misleading
12 when they acquired their Class Vehicles because Minnesota Plaintiff and the
13 Minnesota Sub-Class Members did not have access to Defendants' exclusive and
14 superior knowledge about the Class Vehicles' design and the Headlight Defect.

15 306. Had Minnesota Plaintiff and the Minnesota Sub-Class Members
16 known that the Class Vehicles would contain and/or exhibit the Headlight
17 Defect, they would not have purchased or leased the Class Vehicles or would
18 have paid less for them. Plaintiffs did not receive the benefit of their bargain as a
19 result of Defendants' misconduct.

20 307. Defendants owed Minnesota Plaintiff and the Minnesota Sub-Class
21 Members a duty to disclose the truth about the Headlight Defect because
22 Defendants:

23 a. possessed exclusive and superior knowledge of the design and
24 manufacture of the Class Vehicles and the Headlight Defect;

25 b. intentionally concealed the foregoing from Minnesota Plaintiff
26 and the Minnesota Sub-Class Members; and/or

27 c. made incomplete representations regarding the quality and
28 durability of the Class Vehicles, while purposefully withholding material facts

1 from Minnesota Plaintiff and the Minnesota Sub-Class Members that contradicted
2 these representations.

3 308. Due to Defendants' specific and superior knowledge that the
4 Engines in the Class Vehicles will fail due to the Headlight Defect, their false
5 representations regarding the increased durability of the Class Vehicles, and
6 reliance by Minnesota Plaintiff and the Minnesota Sub-Class Members on these
7 material representations, Defendants had a duty to disclose to Class members
8 that the Headlight Defect will cause engine failure in Class Vehicles, that Class
9 Vehicles do not have the expected durability, reliability, and/or safety over other
10 vehicles or of their predecessor engines, that failure of the Engines will cause
11 damage to Class Vehicle, and that Class members would be required to bear the
12 cost of the damage to their vehicles. Having volunteered to provide information
13 to Minnesota Plaintiff and the Minnesota Sub-Class Members, Defendants had
14 the duty to disclose not just the partial truth, but the entire truth. These omitted
15 and concealed facts were material because they directly impact the value of the
16 Class Vehicles purchased or leased by Minnesota Plaintiff and the Minnesota
17 Sub-Class Members. Longevity, durability, performance, and safety are material
18 concerns to Defendants consumers. Defendants represented to Minnesota
19 Plaintiff and the Minnesota Sub-Class Members that they were purchasing or
20 leasing vehicles that were durable, reliable, safe, efficient, of high quality, and
21 containing engines of advanced and superior characteristics and technology as
22 alleged throughout this Complaint, when in fact it is only a matter of time before
23 the engines fail due to the Headlight Defect.

24 309. Minnesota Plaintiff and the Minnesota Sub-Class Members suffered
25 injury in fact to a legally protected interest. As a result of Defendants' conduct,
26 Minnesota Plaintiff and the Minnesota Sub-Class Members were harmed and
27 suffered actual damages in the form of the costs of diagnosis and repair of their
28 vehicles, and the diminished value of their vehicles.

1 310. As a direct and proximate result of Defendants' unfair or deceptive
2 acts or practices, Minnesota Plaintiff and the Minnesota Sub-Class Members
3 suffered and will continue to suffer injury in fact and/or actual damages.

4 311. Defendants' violations present a continuing risk to Minnesota
5 Plaintiff and the Minnesota Sub-Class Members as well as to the general public.
6 Defendants' unlawful acts and practices complained of herein affect the public
7 interest.

8 312. As a proximate and direct result of Defendants' unfair and deceptive
9 trade practices, Minnesota Plaintiff and members of the Minnesota Sub-Class
10 purchased or leased Class Vehicles and suffered an ascertainable loss and
11 financial harm. These ascertainable losses include, among other things,
12 overpayment at the time of purchase or lease, the cost to repair the Headlight
13 Defect, replacement of the damaged related system components, diminution of
14 Class Vehicle resale value, increased repair and maintenance costs, and other
15 substantial monetary damages and inconvenience.

16 313. As a direct and proximate result of Defendants' unfair or deceptive
17 acts or practices alleged herein, Minnesota Plaintiff and other members of the
18 Minnesota Sub-Class suffered and will continue to suffer actual damages and are
19 entitled to recover actual damages to the extent permitted by law, including class
20 action rules, in an amount to be proven at trial. In addition, Minnesota Plaintiff
21 and the putative Class seek equitable and injunctive relief against Defendants on
22 terms that the Court considers reasonable, and reasonable attorneys' fees.

23 314. Minnesota Plaintiff provided notice of his claims by letter dated
24 December 1, 2022.

25 315. Pursuant to Minn. Stat. § 8.31(3a), Minnesota Plaintiff and the
26 Minnesota Sub-Class Members seek damages in an amount to be proven at trial,
27 including but not limited to actual damages and attorneys' fees, under the
28 Minnesota CFA.

1 316. Minnesota Plaintiff and the Minnesota Sub-Class Members also
 2 seek punitive damages under Minn. Stat. § 549.20(1)(a) given the clear and
 3 convincing evidence that Defendants’ acts show deliberate disregard for the
 4 rights or safety of others.

5 **EIGHTH CAUSE OF ACTION**

6 **Violations of the Minnesota Deceptive Trade Practices Act,**

7 **Minn. Stat. § 325D.43-48, *et seq.***

8 **(On Behalf of the Minnesota Sub-Class Against HMA and HMC)**

9 317. Plaintiffs incorporate by reference the allegations contained in the
 10 preceding paragraphs of this Complaint.

11 318. Minnesota Plaintiff brings this cause of action individually and on
 12 behalf of the Minnesota Sub-Class against Defendants HMA and HMC
 13 (“Defendants” for the purposes of this Cause of Action).

14 319. The Class Vehicles constitute “merchandise” within the meaning of
 15 Minn. Stat. § 325F.68.

16 320. The Minnesota Deceptive Trade Practices Act (“Minnesota DTPA”)
 17 prohibits deceptive trade practices, which occur when a person “(5) represents
 18 that goods or services have sponsorship, approval, characteristics, ingredients,
 19 uses, benefits, or quantities that they do not have or that a person has a
 20 sponsorship, approval, status, affiliation, or connection that the person does not
 21 have;” “(7) represents that goods or services are of a particular standard, quality,
 22 or grade, or that goods are of a particular style or model, if they are of another;”
 23 and “(9) advertises goods or services with intent not to sell them as advertised.”
 24 Minn. Stat. § 325D.44. Defendants engaged in unfair and deceptive practices that
 25 violated the Minnesota DTPA as described above.

26 321. Defendants participated in and engaged in deceptive business or
 27 trade practices prohibited by the Minnesota DTPA by failing to disclose and
 28 actively concealing that the Class Vehicles contained the Headlight Defect, by

1 marketing their Class Vehicles as safe and of high quality, and by presenting
2 themselves as reputable manufacturers that valued safety and stood behind their
3 vehicles after they were sold.

4 322. Defendants knowingly and intentionally misrepresented and omitted
5 material facts in connection with the sale or lease of the Class Vehicles by,
6 among other things, failing to disclose the Headlight Defect; concealing the
7 Headlight Defect; promoting and selling or leasing Class Vehicles they knew
8 were defective, including by marketing their vehicles as safe, reliable, easily
9 operable, efficient, and of high quality; presenting themselves as reputable
10 manufacturers that valued safety, reliability, performance and efficiency, and
11 stood behind their vehicles after they were sold; by failing to make repairs or
12 making repairs and providing replacements that caused Minnesota Plaintiff and
13 the Minnesota Sub-Class Members to experience repeated instances of failure,
14 rendering the New Vehicle Limited Warranty useless; and minimizing the scope
15 and severity of the problems with the Class Vehicles, refusing to acknowledge
16 that they are defective, and failing to provide adequate relief to consumers.
17 Defendants misrepresented and omitted such material facts with the intent to
18 mislead Minnesota Plaintiff and the Minnesota Sub-Class Members about the
19 true nature of the Class Vehicles.

20 323. Defendants systematically misrepresented, concealed, suppressed, or
21 omitted material facts relating to the Class Vehicles and Headlight Defect in the
22 course of their business.

23 324. Defendants also engaged in unlawful trade practices by employing
24 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
25 suppression, or omission of any material fact with intent that others rely upon
26 such concealment, suppression, or omission, in connection with the sale of the
27 Class Vehicles.

28 325. Defendants' unfair and deceptive acts or practices occurred

1 repeatedly in Defendants' trade or business, were capable of deceiving a
2 substantial portion of the purchasing public, and imposed a serious safety risk on
3 the public.

4 326. Defendants knew that the Class Vehicles and their Headlights
5 suffered from an inherent defect, were defectively designed or manufactured, and
6 were not suitable for their intended use.

7 327. Defendants knew or should have known that their conduct violated
8 the Minnesota DTPA.

9 328. Minnesota Plaintiff and the Minnesota Sub-Class Members
10 reasonably relied on Defendants' misrepresentations and omissions of material
11 facts in their advertisements of the Class Vehicles and in the purchase of the
12 Class Vehicles.

13 329. Minnesota Plaintiff and the Minnesota Sub-Class Members had no
14 way of discerning that Defendants' misrepresentations were false and misleading
15 when they acquired their Class Vehicles because Minnesota Plaintiff and the
16 Minnesota Sub-Class Members did not have access to Defendants' exclusive and
17 superior knowledge about the Class Vehicles' design and the Headlight Defect.

18 330. Had Minnesota Plaintiff and the Minnesota Sub-Class Members
19 known that the Class Vehicles would contain and/or exhibit the Headlight
20 Defect, they would not have purchased or leased the Class Vehicles or would
21 have paid less for them. Plaintiffs did not receive the benefit of their bargain as a
22 result of Defendants' misconduct.

23 331. Defendants owed Minnesota Plaintiff and the Minnesota Sub-Class
24 Members a duty to disclose the truth about the Headlight Defect because
25 Defendants:

- 26 a. possessed exclusive and superior knowledge of the design and
27 manufacture of the Class Vehicles and the Headlight Defect;
28 b. intentionally concealed the foregoing from Minnesota Plaintiff

1 and the Minnesota Sub-Class Members; and/or

2 c. made incomplete representations regarding the quality and
3 durability of the Class Vehicles, while purposefully withholding
4 material facts from Minnesota Plaintiff and the Minnesota Sub-
5 Class Members that contradicted these representations.

6 332. Due to Defendants' specific and superior knowledge that the
7 Headlights in the Class Vehicles will fail due to the Headlight Defect, their false
8 representations regarding the increased durability and safety of the Class
9 Vehicles, and reliance by Minnesota Plaintiff and the Minnesota Sub-Class
10 Members on these material representations, Defendants had a duty to disclose to
11 Class members that the Headlight Defect will cause Headlight failure in Class
12 Vehicles, that Class Vehicles do not have the expected durability, reliability,
13 and/or safety over other vehicles, that failure of the Headlights will cause
14 damage to Class Vehicles, and that Class members would be required to bear the
15 cost of the damage to their vehicles. Having volunteered to provide information
16 to Minnesota Plaintiff and the Minnesota Sub-Class Members, Defendants had
17 the duty to disclose not just the partial truth, but the entire truth. These omitted
18 and concealed facts were material because they directly impact the value of the
19 Class Vehicles purchased or leased by Minnesota Plaintiff and the Minnesota
20 Sub-Class Members. Longevity, durability, performance, and safety are material
21 concerns to Defendants consumers. Defendants represented to Minnesota
22 Plaintiff and the Minnesota Sub-Class Members that they were purchasing or
23 leasing vehicles that were durable, reliable, safe, efficient, and of high quality as
24 alleged throughout this Complaint, when in fact it is only a matter of time before
25 the Headlights fail due to the Headlight Defect.

26 333. Minnesota Plaintiff and the Minnesota Sub-Class Members suffered
27 injury in fact to a legally protected interest. As a result of Defendants' conduct,
28 Minnesota Plaintiff and the Minnesota Sub-Class Members were harmed and

1 suffered actual damages in the form of the costs of diagnosis and repair of their
2 vehicles, and the diminished value of their vehicles.

3 334. As a direct and proximate result of Defendants' unfair or deceptive
4 acts or practices, Minnesota Plaintiff and the Minnesota Sub-Class Members
5 suffered and will continue to suffer injury in fact and/or actual damages.

6 335. Defendants' violations present a continuing risk to Minnesota
7 Plaintiff and the Minnesota Sub-Class Members as well as to the general public.
8 Defendants' unlawful acts and practices complained of herein affect the public
9 interest.

10 336. As a proximate and direct result of Defendants' unfair and deceptive
11 trade practices, Minnesota Plaintiff and members of the Minnesota Sub-Class
12 purchased or leased Class Vehicles and suffered an ascertainable loss and
13 financial harm. These ascertainable losses include, among other things,
14 overpayment at the time of purchase or lease, the cost to attempt to repair the
15 Headlight Defect, replacement of the damaged related system components,
16 diminution of Class Vehicle resale value, increased repair and maintenance
17 costs, and other substantial monetary damages and inconvenience.

18 337. Minnesota Plaintiff provided notice of his claims by letter dated
19 December 1, 2022.

20 338. Pursuant to Minn. Stat. §§ 8.31(3a) and 325D.45, Minnesota
21 Plaintiff and the Minnesota Sub-Class Members seek damages in an amount to
22 be proven at trial, including but not limited to actual damages and attorneys'
23 fees, under the Minnesota DTPA.

24 339. Minnesota Plaintiff and the Minnesota Sub-Class Members also
25 seek punitive damages under Minn. Stat. § 549.20(1)(a) given the clear and
26 convincing evidence that Defendants' acts show deliberate disregard for the
27 rights or safety of others.
28

NINTH CAUSE OF ACTION

Violations of the Minnesota False Statement in Advertising Act,

Minn. Stat. § 325F.67, *et seq.*

(On Behalf of the Minnesota Sub-Class Against HMA and HMC)

340. Plaintiffs incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

341. Minnesota Plaintiff brings this cause of action individually and on behalf of the Minnesota Sub-Class against Defendants HMA and HMC (“Defendants” for the purposes of this Cause of Action.

342. The Minnesota False Statement in Advertising Act (“Minnesota FSAA”) prohibits “any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading” in connection with the disposition of merchandise or services. Minn. Stat. Ann. § 325F.67. Defendants engaged in unfair and deceptive practices that violated the Minnesota FSAA as described above.

343. Defendants participated in and engaged in deceptive business or trade practices prohibited by the Minnesota FSAA by failing to disclose and actively concealing that the Class Vehicles contained the Headlight Defect, by marketing their Class Vehicles as safe and of high quality, and by presenting themselves as a reputable manufacturer that valued safety and stood behind their vehicles after they were sold.

344. Defendants knowingly and intentionally misrepresented and omitted material facts in connection with the sale or lease of the Class Vehicles by, among other things, failing to disclose the Headlight Defect; concealing the Headlight Defect; promoting and selling or leasing Class Vehicles it knew were defective, including by marketing their vehicles as safe, reliable, easily operable, efficient, and of high quality; presenting themselves as reputable manufacturers that valued safety, reliability, performance and efficiency, and stood behind their

1 vehicles after they were sold; failing to make repairs or making repairs and
2 providing replacements that caused Minnesota Plaintiff and the Minnesota Sub-
3 Class Members to experience repeated instances of failure, rendering the New
4 Vehicle Limited Warranty useless; and minimizing the scope and severity of the
5 problems with the Class Vehicles, refusing to acknowledge that they are
6 defective, and failing to provide adequate relief to consumers. Defendants
7 misrepresented and omitted such material facts with the intent to mislead
8 Minnesota Plaintiff and the Minnesota Sub-Class Members about the true nature
9 of the Class Vehicles.

10 345. Defendants systematically misrepresented, concealed, suppressed, or
11 omitted material facts relating to the Class Vehicles and Headlight Defect in the
12 course of their business.

13 346. Defendants also engaged in unlawful trade practices by employing
14 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
15 suppression, or omission of any material fact with intent that others rely upon
16 such concealment, suppression, or omission, in connection with the sale of the
17 Class Vehicles.

18 347. Defendants' unfair and deceptive acts or practices occurred
19 repeatedly in Defendants' trade or business, were capable of deceiving a
20 substantial portion of the purchasing public, and imposed a serious safety risk on
21 the public.

22 348. Defendants knew that the Class Vehicles and their Headlights
23 suffered from an inherent defect, were defectively designed or manufactured, and
24 were not suitable for their intended use.

25 349. Defendants knew or should have known that their conduct violated
26 the Minnesota FSAA.

27 350. Minnesota Plaintiff and the Minnesota Sub-Class Members
28 reasonably relied on Defendants' misrepresentations and omissions of material

1 facts in their advertisements of the Class Vehicles and in the purchase of the
2 Class Vehicles.

3 351. Minnesota Plaintiff and the Minnesota Sub-Class Members had no
4 way of discerning that Defendants' misrepresentations were false and misleading
5 when they acquired their Class Vehicles because Minnesota Plaintiff and the
6 Minnesota Sub-Class Members did not have access to Defendants' exclusive and
7 superior knowledge about the Class Vehicles' design and the Headlight Defect.

8 352. Had Minnesota Plaintiff and the Minnesota Sub-Class Members
9 known that the Class Vehicles would contain and/or exhibit the Headlight
10 Defect, they would not have purchased or leased the Class Vehicles or would
11 have paid less for them. Plaintiffs did not receive the benefit of their bargain as a
12 result of Defendants' misconduct.

13 353. Defendants owed Minnesota Plaintiff and the Minnesota Sub-Class
14 Members a duty to disclose the truth about the Headlight Defect because
15 Defendants:

16 a. possessed exclusive and superior knowledge of the design and
17 manufacture of the Class Vehicles and the Headlight Defect;

18 b. intentionally concealed the foregoing from Minnesota Plaintiff
19 and the Minnesota Sub-Class Members; and/or

20 c. made incomplete representations regarding the quality and
21 durability of the Class Vehicles, while purposefully withholding material facts
22 from Minnesota Plaintiff and the Minnesota Sub-Class Members that contradicted
23 these representations.

24 354. Due to Defendants' specific and superior knowledge that the
25 Headlights in the Class Vehicles will fail due to the Headlight Defect, their false
26 representations regarding the increased durability of the Class Vehicles, and
27 reliance by Minnesota Plaintiff and the Minnesota Sub-Class Members on these
28 material representations, Defendants had a duty to disclose to Class members

1 that the Headlight Defect will cause Headlight failure in Class Vehicles, that
2 Class Vehicles do not have the expected durability, reliability, and/or safety over
3 other vehicles or of their predecessor Headlights, that failure of the Headlights
4 will cause damage to Class Vehicle, and that Class members would be required
5 to bear the cost of the damage to their vehicles. Having volunteered to provide
6 information to Minnesota Plaintiff and the Minnesota Sub-Class Members,
7 Defendants had the duty to disclose not just the partial truth, but the entire truth.
8 These omitted and concealed facts were material because they directly impact
9 the value of the Class Vehicles purchased or leased by Minnesota Plaintiff and
10 the Minnesota Sub-Class Members. Longevity, durability, performance, and
11 safety are material concerns to Defendants consumers. Defendants represented to
12 Minnesota Plaintiff and the Minnesota Sub-Class Members that they were
13 purchasing or leasing vehicles that were durable, reliable, safe, efficient, and of
14 high quality, when in fact it is only a matter of time before the Headlights fail
15 due to the Headlight Defect.

16 355. Minnesota Plaintiff and the Minnesota Sub-Class Members suffered
17 injury in fact to a legally protected interest. As a result of Defendants' conduct,
18 Minnesota Plaintiff and the Minnesota Sub-Class Members were harmed and
19 suffered actual damages in the form of the costs of diagnosis and repair of their
20 vehicles, and the diminished value of their vehicles.

21 356. As a direct and proximate result of Defendants' unfair or deceptive
22 acts or practices, Minnesota Plaintiff and the Minnesota Sub-Class Members
23 suffered and will continue to suffer injury in fact and/or actual damages.

24 357. Defendant's violations present a continuing risk to Minnesota
25 Plaintiff and the Minnesota Sub-Class Members as well as to the general public.
26 Defendant's unlawful acts and practices complained of herein affect the public
27 interest.

28 358. As a proximate and direct result of Defendants' unfair and deceptive

trade practices, Minnesota Plaintiff and members of the Minnesota Sub-Class purchased or leased Class Vehicles and suffered an ascertainable loss and financial harm. These ascertainable losses include, among other things, overpayment at the time of purchase or lease, the cost to repair the Headlight Defect, replacement of the damaged related system components, diminution of Class Vehicle resale value, increased repair and maintenance costs, and other substantial monetary damages and inconvenience.

359. As a direct and proximate result of Defendants' unfair or deceptive acts or practices alleged herein, Minnesota Plaintiff and other members of the Minnesota Sub-Class suffered and will continue to suffer actual damages and are entitled to recover actual damages to the extent permitted by law, including class action rules, in an amount to be proven at trial. In addition, Minnesota Plaintiff and the putative Class seek equitable and injunctive relief against Defendants on terms that the Court considers reasonable, and reasonable attorneys' fees.

360. Minnesota Plaintiff provided notice of his claims by letter dated December 1, 2022.

361. Pursuant to Minn. Stat. § 8.31(3a), Minnesota Plaintiff and the Minnesota Sub-Class Members seek damages in an amount to be proven at trial, including but not limited to actual damages and attorneys' fees, under the Minnesota CFA.

362. Minnesota Plaintiff and the Minnesota Sub-Class Members also seek punitive damages under Minn. Stat. § 549.20(1)(a) given the clear and convincing evidence that Defendants' acts show deliberate disregard for the rights or safety of others.

TENTH CAUSE OF ACTION

Breach of Express Warranty

Minn. Stat. §§ 336.2-313 and 336.2A-210

(On behalf of the Minnesota Sub-Class Against HMA)

1 363. Plaintiffs incorporates by reference the allegations contained in the
2 preceding paragraphs of this Complaint.

3 364. Minnesota Plaintiff brings this cause of action individually and on
4 behalf of the members of the Minnesota Sub-Class against Defendant HMA.

5 365. HMA is and was at all relevant times “merchants” with respect to
6 motor vehicles under Minn. Stat. §§ 336.2-104(1) and “sellers” of motor vehicles
7 under § 336.2-103(1)(d).

8 366. With respect to leases, HMA is and was at all relevant times
9 “lessors” of motor vehicles under Minn. Stat. § 336.2A-103(1)(p).

10 367. The Class Vehicles are and were at all relevant times “goods” within
11 the meaning of Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).

12 368. HMA provided all purchasers and lessees of the Class Vehicles with
13 the express warranty described herein, which became a material part of the
14 bargain.

15 369. HMA provided all purchasers and lessees of Hyundai-branded Class
16 Vehicles with the Hyundai Warranty.

17 370. HMA sold and leased the Class Vehicles with a written express
18 warranty covering the Vehicles for five years or 60,000 miles, whichever comes
19 first (Hyundai Warranty).

20 371. Hyundai’s New Vehicle Limited Warranty expressly states that
21 Hyundai covers “repair or replacement of any component originally
22 manufactured or installed by Hyundai Motor Company, Hyundai Motor Group,
23 Hyundai Motor Manufacturing Alabama, Kia Manufacturing Mexico, Kia
24 Motors Manufacturing Georgia or Hyundai Motor America that is found to be
25 defective in material or workmanship, under normal use and maintenance[.]” The
26 warranty further provides that “Warranty service will be provided by an
27 authorized Hyundai dealership without charge for parts or labor.” (Hyundai
28 Warranty).

1 372. HMC designed, manufactured and/or installed the Headlights and
2 the Headlights' component parts in the Class Vehicles, and the Headlights and
3 their component parts are covered by the express Warranties provided by HMA.

4 373. The Headlight Defect at issue in this litigation was present at the
5 time the Class Vehicles were sold or leased to Minnesota Plaintiff and the
6 Minnesota Sub-Class Members.

7 374. Minnesota Plaintiff and the Minnesota Sub-Class Members relied on
8 HMA's express warranties, which were a material part of the bargain, when
9 purchasing or leasing their Class Vehicles.

10 375. Under the express Warranties, HMA was obligated to correct the
11 Headlight Defect in the vehicles owned or leased by Minnesota Plaintiff and the
12 Minnesota Sub-Class Members.

13 376. Although HMA was obligated to correct the Headlight Defect, none
14 of the attempted fixes to the Headlights are adequate under the terms of the
15 Warranties, as they did not cure the defect.

16 377. HMA breached the express Warranties by performing illusory
17 repairs. Rather than repairing the vehicles pursuant to the express Warranties,
18 HMA, via its authorized dealerships and otherwise, falsely informed Minnesota
19 Sub-Class Members that there was no problem with their Class Vehicles,
20 performed ineffective procedures, and/or replaced defective components in the
21 Headlights with equally defective components, without actually repairing the
22 Class Vehicles.

23 378. HMA and their agent dealers have failed and refused to conform the
24 Headlights to the express Warranties. HMA's conduct, as discussed throughout
25 this Complaint, has voided any attempt on their part to disclaim liability for their
26 actions.

27 379. Moreover, HMA's attempt to disclaim or limit these express
28 Warranties vis-à-vis consumers is unconscionable and unenforceable under the

1 circumstances here. Specifically, HMA's warranty limitation is unenforceable
2 because it knowingly sold a defective product without informing consumers
3 about the defect.

4 380. The time limits contained in HMA's warranty period were also
5 unconscionable and inadequate to protect Minnesota Plaintiff and the Minnesota
6 Sub-Class Members. Among other things, Minnesota Plaintiff and the Minnesota
7 Sub-Class Members had no meaningful choice in determining these time
8 limitations, the terms of which unreasonably favored Defendants. A gross
9 disparity in bargaining power existed between HMA and the Class members, and
10 HMA knew or should have known that the Class Vehicles were defective at the
11 time of sale.

12 381. Minnesota Plaintiff and the Minnesota Sub-Class Members have
13 complied with all obligations under the Warranties, or otherwise have been
14 excused from performance of said obligations as a result of HMA's conduct
15 described herein.

16 382. Minnesota Plaintiff and the Minnesota Sub-Class Members were not
17 required to notify HMA of the breach because affording HMA a reasonable
18 opportunity to cure their breach of written warranty would have been futile.
19 HMA were also on notice of the Headlight Defect from the complaints and
20 service requests they received from Plaintiffs and the Class Members, from
21 repairs and/or replacements of the Headlights or components thereof, and
22 through other internal and external sources as described herein. Regardless,
23 Minnesota Plaintiff also provided notice to HMA via letter dated December 1,
24 2022.

25 383. Because HMA, through its conduct and exemplified by its own
26 service bulletins written in conjunction with HMC, have covered repairs of the
27 Headlight Defect if HMA determine the repairs are appropriately covered under
28 the Warranties, HMA cannot now deny that the Warranties cover the Headlight

1 Defect.

2 384. Because HMA have not been able to remedy the Headlight Defect,
3 any limitation on remedies included in the Warranties causes the Warranties to
4 fail their essential purposes, rendering them null and void.

5 385. As a direct and proximate cause of HMA's breach, Minnesota
6 Plaintiff and the Minnesota Sub-Class Members suffered damages and continue
7 to suffer damages, including economic damages at the point of sale or lease and
8 diminution of value of their Class Vehicles. Additionally, Minnesota Plaintiff
9 and the Minnesota Sub-Class Members have incurred or will incur economic
10 damages at the point of repair in the form of the cost of repair.

11 386. As a direct and proximate result of HMA's breach of express
12 warranties, Minnesota Plaintiff and the Minnesota Sub-Class Members have
13 been damaged in an amount to be determined at trial.

14 **ELEVENTH CAUSE OF ACTION**

15 **Breach of the Implied Warranty of Merchantability**

16 **Minn. Stat. §§ 336.2-314 and 336.2A-212**

17 **(On behalf of the Minnesota Sub-Class Against HMA and HMC)**

18 387. Plaintiffs incorporates by reference the allegations contained in the
19 preceding paragraphs of this Complaint.

20 388. Minnesota Plaintiff brings this cause of action individually and on
21 behalf of the members of the Minnesota Sub-Class against Defendants HMA and
22 HMC ("Defendants" for the purposes of this Cause of Action).

23 389. Defendants are and were at all relevant times "merchants" with
24 respect to motor vehicles under Minn. Stat. §§ 336.2-104(1) and "sellers" of
25 motor vehicles under § 336.2-103(1)(d).

26 390. With respect to leases, Defendants are and were at all relevant times
27 "lessors" of motor vehicles under Minn. Stat. § 336.2A-103(1)(p).

28 391. The Class Vehicles are and were at all relevant times "goods" within

1 the meaning of Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).

2 392. A warranty that the Class Vehicles were in merchantable condition
3 and fit for the ordinary purpose for which vehicles are used is implied by law
4 under Minn. Stat. §§ 336.2-314 and 336.2A-212.

5 393. Defendants knew or had reason to know of the specific use for
6 which the Class Vehicles were purchased or leased. Defendants directly sold and
7 marketed vehicles equipped with the Headlights to customers through authorized
8 dealers, like those from whom Minnesota Plaintiff and the Minnesota Sub-Class
9 Members bought or leased their vehicles, for the intended purpose of consumers
10 purchasing or leasing the vehicles. Defendants knew that the Class Vehicles
11 would and did pass unchanged from Defendants to the authorized dealers to
12 Minnesota Plaintiff and the Minnesota Sub-Class Members, with no modification
13 to the defective Headlights.

14 394. Defendants provided Plaintiffs and Class Members with an implied
15 warranty that the Class Vehicles and their components and parts are
16 merchantable and fit for the ordinary purposes for which they were sold.

17 395. This implied warranty included, among other things: (i) a warranty
18 that the Class Vehicles and their Headlights that were manufactured, supplied,
19 distributed, and/or sold by Defendants were safe and reliable for providing
20 transportation; and (ii) a warranty that the Class Vehicles and their Headlights
21 would be fit for their intended use while the Class Vehicles were being operated.

22 396. Contrary to the applicable implied warranties, the Class Vehicles
23 and their Headlights, at the time of sale and thereafter, were not fit for their
24 ordinary and intended purpose of providing Plaintiffs and Class Members with
25 reliable, durable, and safe transportation. Instead, the Class Vehicles are
26 defective, including, but not limited to, the defective design, installation, and
27 manufacture of their Headlights and the existence of the Headlight Defect at the
28 time of sale or lease and thereafter. Defendants knew of this defect at the time

1 these sale or lease transactions occurred.

2 397. As a result of Defendants' breach of the applicable implied
3 warranties, Minnesota Plaintiff and the Minnesota Sub-Class Members suffered
4 an ascertainable loss of money, property, and/or value of their Class Vehicles.
5 Additionally, as a result of the Headlight Defect, Minnesota Plaintiff and the
6 Minnesota Sub-Class Members were harmed and suffered actual damages in that
7 the Class Vehicles' Headlight components are substantially certain to fail before
8 their expected useful life has run.

9 398. Defendants' actions, as complained of herein, breached the implied
10 warranty that the Class Vehicles were of merchantable quality and fit for such
11 use in violation of Minn. Stat. §§ 336.2-314 and 336.2A-212.

12 399. Minnesota Plaintiff and the Minnesota Sub-Class Members have
13 complied with all obligations under the warranty, or otherwise have been
14 excused from performance of said obligations as a result of Defendants' conduct
15 described herein.

16 400. Minnesota Plaintiff and the Minnesota Sub-Class Members were not
17 required to notify Defendants of the breach because affording Defendants a
18 reasonable opportunity to cure their breach of implied warranty would have been
19 futile. Defendants were also on notice of the Headlight Defect from the
20 complaints and service requests they received from Plaintiffs and the Class
21 Members, from repairs and/or replacements of the Headlights or components
22 thereof, and through other internal sources.

23 401. In addition, on or about December 1, 2022, Minnesota Plaintiff gave
24 notice to Defendants that he intended to pursue his warranty claims on behalf of
25 a class of similarly situated consumers.

26 402. Because Minnesota Plaintiff purchased his vehicle from an
27 authorized Defendants dealer, he is in privity with Defendants since, (1) an
28 agency relationship establishes privity for purposes of the breach of implied

1 warranty claims, and (2) privity is not required where plaintiffs are intended
2 third-party beneficiaries of a defendant's implied warranties and the contracts
3 between HMA and its authorized dealers.

4 403. As a direct and proximate cause of Defendants' breach, Minnesota
5 Plaintiff and the Minnesota Sub-Class Members suffered damages and continue
6 to suffer damages, including economic damages at the point of sale or lease and
7 diminution of value of their Class Vehicles. Additionally, Minnesota Plaintiff
8 and the Minnesota Sub-Class Members have incurred or will incur economic
9 damages at the point of repair in the form of the cost of repair.

10 404. As a direct and proximate result of Defendants' breach of the
11 implied warranty of merchantability, Minnesota Plaintiff and the Minnesota Sub-
12 Class Members have been damaged in an amount to be proven at trial.

13 **TWELFTH CAUSE OF ACTION**

14 **Violation Of The South Carolina Unfair Trade Practices Act**

15 **S.C. Code Ann. § 39-5-10, *et seq.***

16 **(On behalf of the South Carolina Sub-Class Against KMA and KMC)**

17 405. Plaintiffs incorporates by reference the allegations contained in the
18 preceding paragraphs of this Complaint.

19 406. Plaintiff Robert Ewing ("South Carolina Plaintiff") brings this cause
20 of action on his own behalf and on behalf of the members of the South Carolina
21 Sub-Class against Defendants KMA and KMC ("Defendants" for the purpose of
22 this Cause of Action).

23 407. Defendants are "persons" under S.C. Code Ann. § 39-5-10.

24 408. The South Carolina Unfair Trade Practices Act ("South Carolina
25 UTPA") prohibits "unfair or deceptive acts or practices in the conduct of any
26 trade or commerce." S.C. Code Ann. § § 39-5-20(a). Defendants' conduct and
27 acts were offensive to public policy or immoral, unethical, or oppressive, thus
28 unfair; indeed, to manufacture, distribute, and promote the Class Vehicles with a

1 Defect known to cause failure while the Class Vehicle is in motion is surely
2 detrimental to the public at large. Defendants' unfair or deceptive acts or
3 practices were prohibited by the South Carolina UTPA.

4 409. Defendants participated in unfair or deceptive trade practices that
5 violated the South Carolina UTPA as described below and alleged throughout
6 the Complaint. By failing to disclose the Defect, by concealing the Defect, by
7 marketing its vehicles as safe, reliable, easily operable, efficient, and of high
8 quality, and by presenting itself as reputable manufacturers that valued safety,
9 cleanliness, performance and efficiency, and stood behind its vehicles after they
10 were sold, Defendants knowingly and intentionally misrepresented and omitted
11 material facts in connection with the sale or lease of the Class Vehicles.
12 Defendants systematically misrepresented, concealed, suppressed, or omitted
13 material facts relating to the Class Vehicles and Defect in the course of its
14 business.

15 410. Defendants also engaged in unlawful trade practices by employing
16 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,
17 suppression, or omission of any material fact with intent that others rely upon
18 such concealment, suppression or omission, in connection with the sale of the
19 Class Vehicles.

20 411. Defendants' unfair and deceptive acts or practices occurred
21 repeatedly in Defendants' trade or business, were capable of deceiving a
22 substantial portion of the purchasing public and imposed a serious safety risk on
23 the public.

24 412. Defendants knew that the Class Vehicles and their Headlights
25 suffered from an inherent defect, were defectively designed or manufactured, and
26 were not suitable for their intended use.

27 413. Defendants knew or should have known that their conduct violated
28 the South Carolina UTPA.

1 414. South Carolina Plaintiff and the South Carolina Sub-Class Members
2 reasonably relied on Defendants' misrepresentations and omissions of material
3 facts in its advertisements of the Class Vehicles and in the purchase of the Class
4 Vehicles.

5 415. Had South Carolina Plaintiff and the South Carolina Sub-Class
6 Members known that the Class Vehicles would exhibit the Defect, they would
7 not have purchased or leased the Class Vehicles or would have paid less for
8 them. Plaintiffs did not receive the benefit of their bargain as a result of
9 Defendants' misconduct.

10 416. Defendants owed South Carolina Plaintiff and the South Carolina
11 Sub-Class Members a duty to disclose the truth about the Defect because
12 Defendants: (a) possessed exclusive knowledge of the design of the Class
13 Vehicles and the Defect; (b) intentionally concealed the foregoing from South
14 Carolina Plaintiff and the South Carolina Sub-Class Members; and/or (c) made
15 incomplete representations regarding the quality and durability of the Class
16 Vehicles, while purposefully withholding material facts from South Carolina
17 Plaintiff and the South Carolina Sub-Class Members that contradicted these
18 representations.

19 417. Due to Defendants' specific and superior knowledge that the
20 Headlights in the Class Vehicles will fail due to the Defect, its false
21 representations regarding the increased durability of the Class Vehicles, and
22 reliance by South Carolina Plaintiff and the South Carolina Sub-Class Members
23 on these material representations, Defendants had a duty to disclose to Class
24 members that the Class Vehicles' Headlights will fail, that Class Vehicles do not
25 have the expected durability, reliability, and/or safety over other vehicles, and
26 that Class members would be required to bear the cost of the Defect in their
27 vehicles. Having volunteered to provide information to South Carolina Plaintiff
28 and the South Carolina Sub-Class Members, Defendants had the duty to disclose

1 not just the partial truth, but the entire truth. These omitted and concealed facts
2 were material because they directly impact the value of the Class Vehicles
3 purchased or leased by South Carolina Plaintiff and the South Carolina Sub-
4 Class Members. Longevity, durability, performance, and safety are material
5 concerns to Defendants' consumers. Defendants represented to South Carolina
6 Plaintiff and the South Carolina Sub-Class Members that they were purchasing
7 or leasing vehicles that were durable, reliable, safe, efficient, of high quality, and
8 containing safe Headlights as alleged throughout this Complaint, when in fact it
9 is only a matter of time before the Headlights fail due to the Defect.

10 418. South Carolina Plaintiff provided notice of his claims to Defendants
11 via letter dated December 2, 2022.

12 419. South Carolina Plaintiff and the South Carolina Sub-Class Members
13 suffered injury in fact to a legally protected interest. As a result of Defendants'
14 conduct, South Carolina Plaintiff and the South Carolina Sub-Class Members
15 were harmed and suffered actual damages in the form of the diminished value of
16 their vehicles.

17 420. As a result of Defendants' conduct, South Carolina Plaintiff and the
18 South Carolina Sub-Class Members were harmed and suffered actual damages as
19 a result of Defendants' misrepresentations and omissions with regard to their
20 Class Vehicles' Headlights because they purchased vehicles which do not
21 perform as advertised.

22 421. As a direct and proximate result of Defendants' unfair or deceptive
23 acts or practices, South Carolina Plaintiff and the South Carolina Sub-Class
24 Members suffered and will continue to suffer injury in fact and/or actual
25 damages.

26 422. Defendants' violations present a continuing risk to South Carolina
27 Plaintiff and the South Carolina Sub-Class Members as well as to the general
28 public. Defendants' unlawful acts and practices complained of herein affect the

1 public interest. Specifically: (1) the number of consumers affected by
2 Defendants' deceptive practices are in the hundreds of thousands nation-wide;
3 (2) Defendants have significantly high sophistication and bargaining power with
4 respect to the manufacture and sale of the Class Vehicles to Plaintiffs and
5 individual Class members; and (3) so long as the Class Vehicles continue to be
6 sold and distributed with the defective Headlights, the likelihood of continued
7 impact on other consumers is significant.

8 423. Pursuant to S.C. Code Ann. § 39-5-140(a), South Carolina Plaintiff
9 and the South Carolina Sub-Class Members seek monetary relief against
10 Defendant to recover for economic losses, reasonable attorney's fees, and costs.
11 Because Defendants' actions were willful and knowing, Plaintiffs' damages
12 should be trebled.

13 424. South Carolina Plaintiff and the South Carolina Sub-Class Members
14 further allege that Defendant's malicious and deliberate conduct warrants an
15 assessment of punitive damages because Defendant carried out despicable
16 conduct with willful and conscious disregard of the rights and safety of others,
17 subjecting Plaintiffs and the Class to cruel and unjust hardship as a result.

18
19 **THIRTEENTH CAUSE OF ACTION**

20 **Breach of Express Warranty**

21 **S.C. Code Ann. §§ 36-2-313 and 36-2A-210**

22 **(On Behalf of the South Carolina Sub-Class Against KMA)**

23 425. Plaintiffs incorporate by reference the allegations contained in the
24 preceding paragraphs of this Complaint.

25 426. South Carolina Plaintiff brings this cause of action on his own
26 behalf and on behalf of the members of the South Carolina Sub-Class against
27 Defendant KMA.

28 427. KMA is and was at all relevant times a "merchant" with respect to

1 motor vehicles under S.C. Code Ann. §§ 36-2-104(1) and 36-2A-103(1)(t), and a
2 “seller” of motor vehicles under § 36-2-103(1)(d).

3 428. With respect to leases, KMA is and was at all relevant times a
4 “lessor” of motor vehicles under S.C. Code Ann. § § 36-2A-103(1)(p).

5 429. The Class Vehicles are and were at all relevant times “goods” within
6 the meaning of S.C. Code Ann. § §§ 36-2-105(1) and 36-2A-103(1)(h).

7 430. KMA provided all purchasers and lessees of the Class Vehicles with
8 the express warranty described herein, which became a material part of the
9 bargain.

10 431. KMA provided all purchasers and lessees of Kia-branded Class
11 Vehicles with the Kia Warranty.

12 432. KMA sold and leased the Class Vehicles with a written express
13 warranty covering the Vehicles for six years or 60,000 miles, whichever comes
14 first (Kia Warranty).

15 433. Kia’s New Vehicle Limited Warranty expressly states that Kia
16 “warrants that it will arrange for an Authorized Kia dealer at locations of its
17 choice to provide for the repair of your vehicle if it fails to function properly
18 during normal use.” The warranty further provides that “Authorized service
19 facilities will remedy such failures to function properly at Kia’s expense[.]” (Kia
20 Warranty).

21 434. KMC designed, manufactured and/or installed the Headlights and
22 the Headlights’ component parts in the Class Vehicles, and the Headlights and
23 their component parts are covered by the express Warranties provided by KMA.

24 435. The Defect at issue in this litigation was present at the time the
25 Class Vehicles were sold or leased to South Carolina Plaintiff and the South
26 Carolina Sub-Class Members.

27 436. Plaintiffs relied on KMA’s express warranties, which were a
28 material part of the bargain, when purchasing or leasing their Class Vehicles.

1 437. Under the express Warranties, KMA was obligated to correct the
2 Defect in the vehicles owned or leased by South Carolina Plaintiff and the South
3 Carolina Sub-Class Members.

4 438. Although KMA was obligated to correct the Defect, none of the
5 attempted fixes to the Headlights are adequate under the terms of the Warranties,
6 as they did not cure the defect.

7 439. KMA breached the express Warranties by performing illusory
8 repairs. Rather than repairing the vehicles pursuant to the express Warranties via
9 its authorized dealerships, KMA, via its dealerships and otherwise, falsely
10 informed South Carolina Sub-Class Members that there was no problem with
11 their Class Vehicles, performed ineffective procedures, and/or replaced defective
12 components in the Headlight Assembly with equally defective components,
13 without actually repairing the Class Vehicles.

14 440. KMA and their agent dealers have failed and refused to conform the
15 Headlights to the express Warranties. KMA's conduct, as discussed throughout
16 this Complaint, has voided any attempt on its part to disclaim liability for their
17 actions.

18 441. Moreover, KMA's attempt to disclaim or limit these express
19 Warranties vis-à-vis consumers is unconscionable and unenforceable under the
20 circumstances here. Specifically, KMA's warranty limitation is unenforceable
21 because it knowingly sold a defective product without informing consumers
22 about the defect.

23 442. The time limits contained in KMA's warranty period were also
24 unconscionable and inadequate to protect South Carolina Plaintiff and the South
25 Carolina Sub-Class Members. Among other things, South Carolina Plaintiff and
26 the South Carolina Sub-Class Members had no meaningful choice in determining
27 these time limitations, the terms of which unreasonably favored KMA. A gross
28 disparity in bargaining power existed between KMA and the Class members, and

1 KMA knew or should have known that the Class Vehicles were defective at the
2 time of sale.

3 443. South Carolina Plaintiff and the South Carolina Sub-Class Members
4 have complied with all obligations under the Warranties, or otherwise have been
5 excused from performance of said obligations as a result of KMA's conduct
6 described herein.

7 444. South Carolina Plaintiff and the South Carolina Sub-Class Members
8 were not required to notify KMA's of the breach because affording KMA a
9 reasonable opportunity to cure their breach of written warranty would have been
10 futile. KMA were also on notice of the Defect from the complaints and service
11 requests it received from Plaintiffs and the Class Members, from repairs and/or
12 replacements of the Headlights or components thereof, and through other internal
13 and external sources as described herein. Regardless, South Carolina Plaintiff
14 provided KMA notice of the breaches of express warranty by letter dated
15 December 2, 2022.

16 445. Because KMA, through their conduct and exemplified by their own
17 service bulletins, have covered repairs of the Defect if KMA determines the
18 repairs are appropriately covered under the Warranties, KMA cannot now deny
19 that the Warranties cover the Defect.

20 446. Because KMA have not been able to remedy the Defect, any
21 limitation on remedies included in the Warranties causes the Warranties to fail
22 their essential purposes, rendering them null and void.

23 447. As a direct and proximate cause of KMA's breach, South Carolina
24 Plaintiff and the South Carolina Sub-Class Members suffered damages and
25 continue to suffer damages, including economic damages at the point of sale or
26 lease and diminution of value of their Class Vehicles. Additionally, South
27 Carolina Plaintiff and the South Carolina Sub-Class Members have incurred or
28 will incur economic damages at the point of repair in the form of the cost of

1 repair.

2 448. As a direct and proximate result of KMA's breach of express
3 warranties, South Carolina Plaintiff and the South Carolina Sub-Class Members
4 have been damaged in an amount to be determined at trial.

5 **FOURTEENTH CAUSE OF ACTION**

6 **Breach of The Implied Warranty Of Merchantability**

7 **S.C. Code Ann. §§ 36-2-314 and 36-2A-212**

8 **(On Behalf of the South Carolina Sub-Class Against KMA and KMC)**

9 449. Plaintiffs incorporate by reference the preceding paragraphs of this
10 Complaint.

11 450. South Carolina Plaintiff brings this cause of action on his own
12 behalf and on behalf of the members of the South Carolina Sub-Class against
13 Defendants KMA and KMC ("Defendants" for the purposes of this Cause of
14 Action).

15 451. Defendants are and were at all relevant times "merchants" with
16 respect to motor vehicles under S.C. Code Ann. § §§ 36-2-104(1) and 36-2A-
17 103(1)(t), and "sellers" of motor vehicles under § 36-2-103(1)(d).

18 452. With respect to leases, Defendants are and were at all relevant times
19 "lessors" of motor vehicles under S.C. Code Ann. § § 36-2A-103(1)(p).

20 453. The Class Vehicles are and were at all relevant times "goods" within
21 the meaning of S.C. Code Ann. § §§ 36-2-105(1) and 36-2A-103(1)(h).

22 454. A warranty that the Class Vehicles were in merchantable condition
23 and fit for the ordinary purpose for which vehicles are used is implied by law
24 under S.C. Code Ann. § §§ 36-2-314 and 36-2A-212.

25 455. Defendants knew or had reason to know of the specific use for
26 which the Class Vehicles were purchased or leased. Defendants directly sold and
27 marketed vehicles equipped with Headlights to customers through KMA
28 authorized dealers, like those from whom South Carolina Plaintiff and the South

1 Carolina Sub-Class Members bought or leased their vehicles, for the intended
2 purpose of consumers purchasing the vehicles. Defendants knew that the Class
3 Vehicles would and did pass unchanged from the authorized dealers to South
4 Carolina Plaintiff and the South Carolina Sub-Class Members, with no
5 modification to the defective Headlights.

6 456. Defendants provided Plaintiffs and Class Members with an implied
7 warranty that the Class Vehicles and their components and parts are
8 merchantable and fit for the ordinary purposes for which they were sold.

9 457. This implied warranty included, among other things: (i) a warranty
10 that the Class Vehicles and their Headlights that were manufactured, supplied,
11 distributed, and/or sold by Defendants were safe and reliable for providing
12 transportation; and (ii) a warranty that the Class Vehicles and their Headlights
13 would be fit for their intended use while the Class Vehicles were being operated.

14 458. Contrary to the applicable implied warranties, the Class Vehicles
15 and their Headlights at the time of sale and thereafter were not fit for their
16 ordinary and intended purpose of providing Plaintiffs and Class Members with
17 reliable, durable, and safe transportation. Instead, the Class Vehicles are
18 defective, including, but not limited to, the defective design and manufacture of
19 their Headlights and the existence of the Defect at the time of sale or lease and
20 thereafter. Defendants knew of this defect at the time these sale or lease
21 transactions occurred.

22 459. As a result of Defendants' breach of the applicable implied
23 warranties, South Carolina Plaintiff and the South Carolina Sub-Class Members
24 of the Class Vehicles suffered an ascertainable loss of money, property, and/or
25 value of their Class Vehicles. Additionally, as a result of the Defect, South
26 Carolina Plaintiff and the South Carolina Sub-Class Members were harmed and
27 suffered actual damages in that the Class Vehicles' Headlights are substantially
28 certain to fail before their expected useful life has run.

1 460. Defendants' actions, as complained of herein, breached the implied
2 warranty that the Class Vehicles were of merchantable quality and fit for such
3 use in violation of S.C. Code Ann. § §§ 36-2-314 and 36-2A-212.

4 461. South Carolina Plaintiff and the South Carolina Sub-Class Members
5 have complied with all obligations under the warranty, or otherwise have been
6 excused from performance of said obligations as a result of Defendants' conduct
7 described herein.

8 462. South Carolina Plaintiff and the South Carolina Sub-Class Members
9 were not required to notify Defendants of the breach because affording
10 Defendants a reasonable opportunity to cure their breach of written warranty
11 would have been futile. Defendants were also on notice of the Defect from the
12 complaints and service requests it received from Plaintiffs and the Class
13 Members, from repairs and/or replacements of the Headlights or components
14 thereof, and through other internal sources as described herein. Regardless,
15 South Carolina Plaintiff provided notice of the breaches of implied warranty to
16 Defendants via letter dated December 2, 2022.

17 463. As a direct and proximate cause of Defendants' breach, South
18 Carolina Plaintiff and the South Carolina Sub-Class Members suffered damages
19 and continue to suffer damages, including economic damages at the point of sale
20 or lease and diminution of value of their Class Vehicles. Additionally, South
21 Carolina Plaintiff and the South Carolina Sub-Class Members have incurred or
22 will incur economic damages at the point of repair in the form of the cost of
23 repair.

24 464. As a direct and proximate result of Defendants' breach of the
25 implied warranty of merchantability, South Carolina Plaintiff and the South
26 Carolina Sub-Class Members have been damaged in an amount to be proven at
27 trial.
28

FIFTEENTH CAUSE OF ACTION

**(Breach of Express Warranty under the Magnuson-Moss Warranty Act,
15 U.S.C. § 2303 *et seq.*)**

**(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All
Sub-Classes Against Defendants HMA and KMA)**

465. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

466. Plaintiffs bring this cause of action on behalf of themselves and on behalf of the Nationwide Class, or alternatively on behalf of the Sub-Classes, or on behalf of themselves individually against Defendants HMA and KMA (“Defendants” for the purposes of this Cause of Action).

467. Defendants provided all purchasers and lessees of the Class Vehicles with an express warranty described *infra*, which became a material part of the bargain.

468. The Headlight assembly and its component parts were manufactured and/or installed in the Class Vehicles by HMC or KMC and are covered by the express warranties issued by HMA or KMA.

469. In a section entitled “New Vehicle Limited Warranty,” Kia’s express warranty provides, in relevant part, that Kia “warrants that it will arrange for an Authorized Kia dealer at locations of its choice to provide for the repair of your vehicle if it fails to function properly during normal use.” The warranty further provides that “Authorized service facilities will remedy such failures to function properly at Kia’s expense[.]” (Kia Warranty).

470. In a section entitled “New Vehicle Limited Warranty,” Hyundai’s express warranty provides, in relevant part, that Hyundai covers “repair or replacement of any component originally manufactured or installed by Hyundai Motor Company, Hyundai Motor Group, Hyundai Motor Manufacturing Alabama, Kia Manufacturing Mexico, Kia Motors Manufacturing Georgia or

1 Hyundai Motor America that is found to be defective in material or
2 workmanship, under normal use and maintenance[.]” The warranty further
3 provides that “Warranty service will be provided by an authorized Hyundai
4 dealership without charge for parts or labor.” (Hyundai Warranty).

5 471. Defendants breached the express warranties by selling and leasing
6 Class Vehicles with Headlights that were defective, requiring repair or
7 replacement within the warranty period, and refusing to honor the express
8 warranty by repairing or replacing, free of charge, the Headlight and its
9 component parts. Defendants have failed to “repair” the defects as alleged
10 herein.

11 472. Plaintiffs was not required to notify Defendants of the breach or was
12 not required to do so because affording Defendants a reasonable opportunity to
13 cure its breach of written warranty would have been futile. Defendants were also
14 on notice of the defect from complaints and service requests they received from
15 Class Members, from repairs and/or replacements of the Headlight, and from
16 other internal sources.

17 473. Plaintiffs also provided notice to Defendants of their breach of
18 warranty claims under the MMWA by letters dated December 1, 2022 (Plaintiff
19 Maranda), December 2, 2022 (Plaintiff Ewing), January 25, 2023 (Plaintiff
20 Jones), and February 23, 2023 (Plaintiff Holliday).

21 474. As a direct and proximate cause of Defendants’ breach, Plaintiffs
22 and the other Class members have suffered, and continue to suffer, damages,
23 including economic damages at the point of sale or lease. Additionally, Plaintiffs
24 and the other Class members have incurred or will incur economic damages at
25 the point of repair in the form of the cost of repair.

26 475. Plaintiffs and the other Class members are entitled to legal and
27 equitable relief against Defendants, including actual damages, consequential
28 damages, specific performance, attorneys’ fees, costs of suit, and other relief as

1 appropriate.

2 **SIXTEENTH CAUSE OF ACTION**

3 **(Breach of Implied Warranty under the Magnuson-Moss Warranty Act,**
4 **15 U.S.C. § 2303 *et seq.*)**

5 **(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All**
6 **Sub-Classes Against All Defendants)**

7 476. Plaintiffs incorporate by reference the allegations contained in the
8 preceding paragraphs of this Complaint.

9 477. Plaintiffs bring this cause of action on behalf of themselves and on
10 behalf of the Nationwide Class, or alternatively on behalf of the Sub-Classes, or
11 on behalf of themselves individually against all Defendants.

12 478. The Class Vehicles are a “consumer product” within the meaning of
13 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

14 479. Plaintiffs and Class Members are “consumers” within the meaning
15 of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

16 480. Defendants are “suppliers” and “warrantors” within the meaning of
17 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

18 481. Defendants impliedly warranted that the Class Vehicles were of
19 merchantable quality and fit for use. This implied warranty included, among
20 other things: (i) a warranty that the Class Vehicles and their Headlights
21 manufactured, supplied, distributed, and/or sold by Defendants would provide
22 safe and reliable transportation; and (ii) a warranty that the Class Vehicles and
23 their Headlights would be fit for their intended use while the Class Vehicles were
24 being operated.

25 482. Contrary to the applicable implied warranties, the Class Vehicles
26 and their Headlights at the time of sale and thereafter were not fit for their
27 ordinary and intended purpose of providing Plaintiffs and Class members with
28 reliable, durable, and safe transportation. Instead, the Class Vehicles are

1 defective, including the defective design and materials of their Headlights.

2 483. Defendants' breach of implied warranties has deprived Plaintiffs
3 and Class members of the benefit of their bargain.

4 484. The amount in controversy of Plaintiffs' individual claims meets or
5 exceeds the sum or value of \$25,000. In addition, the amount in controversy
6 meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs)
7 computed on the basis of all claims to be determined in this suit.

8 485. Defendants have been afforded a reasonable opportunity to cure
9 their breach, including when Plaintiffs and Class members brought their vehicles
10 in for diagnoses and Headlight repair.

11 486. As a direct and proximate cause of Defendants' breach of implied
12 warranties, Plaintiffs and Class members sustained and incurred damages and
13 other losses in an amount to be determined at trial. Defendants' conduct
14 damaged Plaintiffs and Class members, who are entitled to recover actual
15 damages, consequential damages, specific performance, diminution in value,
16 costs, attorneys' fees, and/or other relief as appropriate.

17 487. As a result of Defendants' violations of the Magnuson-Moss
18 Warranty Act as alleged herein, Plaintiffs and Class members have incurred
19 damages.

20 488. Plaintiffs also provided notice to Defendants of its breach of
21 warranty claims under the MMWA by letters dated December 1, 2022 (Plaintiff
22 Maranda), December 2, 2022 (Plaintiff Ewing), January 23, 2023 (Plaintiff
23 Jones), and February 23, 2023 (Plaintiff Holliday).

24 **SEVENTEENTH CAUSE OF ACTION**

25 **(For Fraud by Omission or Fraudulent Concealment)**

26 **(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All**
27 **Sub-Classes Against All Defendants)**

28 489. Plaintiffs incorporate by reference the allegations contained in the

preceding paragraphs of this Complaint.

490. Plaintiffs bring this cause of action on behalf of themselves and the Class or, alternatively, on behalf of all Sub-Classes against all Defendants.

491. Defendants knew that the Class Vehicles suffered from an inherent Headlight Defect, were defectively designed and/or manufactured, and were not suitable for their intended use.

492. Defendants concealed from and failed to disclose to Plaintiffs and Class Members the defective nature of the Class Vehicles.

493. Defendants were under a duty to Plaintiffs and Class Members to disclose the defective nature of the Class Vehicles because:

- a. Defendants were in a superior position to know the true state of facts about the safety defect contained in the Class Vehicles;
- b. The omitted facts were material because they directly impact the safety of the Class Vehicles;
- c. Defendants knew the omitted facts regarding the Headlight Defect were not known to or reasonably discoverable by Plaintiffs and Class Members;
- d. Defendants made partial disclosures about the quality of the Class Vehicles without revealing their true defective nature; and,
- e. Defendants actively concealed the defective nature of the Class Vehicles from Plaintiffs and Class Members.

494. The facts concealed or not disclosed by Defendants to Plaintiffs and the other Class Members are material in that a reasonable person would have considered them to be important in deciding whether to purchase or lease Defendants' Class Vehicles or pay a lesser price for them. Whether a vehicle's Headlight is defective, which can suddenly cause lights to fail, dim, or malfunction during night driving or inclement weather, thereby causing the inability to see pedestrians, animals, and road hazards, is a material safety

1 concern. Had Plaintiffs and Class Members known about the defective nature of
2 the Class Vehicles, they would not have purchased or leased the Class Vehicles
3 or would have paid less for them.

4 495. Defendants concealed or failed to disclose the true nature of the
5 design and/or manufacturing defects contained in the Class Vehicles to induce
6 Plaintiffs and Class Members to act thereon. Plaintiffs and the other Class
7 Members justifiably relied on Defendant's omissions to their detriment. This
8 detriment is evident from Plaintiffs and Class Members' purchase or lease of
9 Defendants' defective Class Vehicles.

10 496. Defendants continued to conceal the defective nature of the Class
11 Vehicles even after Class Members began to report the problems. Indeed,
12 Defendants continue to cover up and conceal the true nature of the problem
13 today.

14 497. As a direct and proximate result of Defendants' misconduct,
15 Plaintiffs and Class Members have suffered and will continue to suffer actual
16 damages. Plaintiffs and the Class reserve their right to elect either to (a) rescind
17 their purchase or lease of the defective Vehicles and obtain restitution or (b)
18 affirm their purchase or lease of the defective Vehicles and recover damages.

19 498. Defendants' acts were done maliciously, oppressively, deliberately,
20 with intent to defraud, and in reckless disregard of Plaintiffs' and the Class's
21 rights and well-being to enrich Defendants. Defendants' conduct warrants an
22 assessment of punitive damages in an amount sufficient to deter such conduct in
23 the future, which amount is to be determined according to proof

24 **EIGHTEENTH CAUSE OF ACTION**

25 **(For Unjust Enrichment)**

26 **(On Behalf of the Nationwide Class, or, in the Alternative, on Behalf of All**
27 **Sub-Classes Against All Defendants)**

28 499. Plaintiffs incorporate by reference the allegations contained in the

1 preceding paragraphs of this Complaint.

2 500. Plaintiffs bring this cause of action on behalf of themselves and the
3 Class or, alternatively, on behalf of all Sub-Classes against all Defendants.

4 501. Defendants have received and retained a benefit from Plaintiffs and
5 the members of the Class, and inequity has resulted.

6 502. As a direct and proximate result of Defendants' failure to disclose
7 known defects, Defendants have profited through the sale and lease of the Class
8 Vehicles, the value of which was artificially inflated by Defendants'
9 concealment of and omissions regarding the Headlight Defect. Defendants
10 charged higher prices for the vehicles than the vehicles' true value, and Plaintiffs
11 and Class Members thus overpaid for the Class Vehicles. Although these
12 vehicles are purchased through Defendants' authorized dealers and distributors,
13 the money from the vehicle sales flows directly back to Defendants.

14 503. Additionally, as a direct and proximate result of Defendants' failure
15 to disclose known defects in the Class Vehicles, Plaintiffs and Class Members
16 have vehicles that require repeated, high-cost repairs that can and therefore have
17 conferred an unjust substantial benefit upon Defendants.

18 504. Defendants have been unjustly enriched due to the known defects in
19 the Class Vehicles through the use of money paid that earned interest or
20 otherwise added to Defendants' profits when said money should have remained
21 with Plaintiffs and Class Members.

22 505. Plaintiffs and Class Members were not aware of the true facts
23 regarding the Defect in the Class Vehicles and did not benefit from Defendants'
24 unjust conduct.

25 506. As a result of the Defendants' unjust enrichment, Plaintiffs and
26 Class Members have suffered damages.

27 507. Plaintiffs do not seek restitution under their unjust enrichment
28 claim. Rather, Plaintiffs and Class Members seek non-restitutionary

1 disgorgement of the financial profits that Defendants obtained as a result of its
2 unjust conduct.

3 508. Additionally, Plaintiffs seek injunctive relief to compel Defendants
4 to offer, under warranty, remediation solutions that Defendant identifies.
5 Plaintiffs also seek injunctive relief enjoining Defendants from further deceptive
6 distribution, sales, and lease practices with respect to Class Vehicles, enjoining
7 Defendants from selling the Class Vehicles with the misleading information;
8 compelling Defendants to provide Class members with a replacement
9 components that do not contain the defects alleged herein; and/or compelling
10 Defendants to reform their warranties, in a manner deemed to be appropriate by
11 the Court, to cover the injury alleged and to notify all Class Members that such
12 warranties have been reformed. Money damages are not an adequate remedy for
13 the above requested non-monetary injunctive relief.

14 **RELIEF REQUESTED**

15 509. Plaintiffs, on behalf of themselves and all others similarly situated,
16 request the Court enter judgment against Defendants, as follows:

- 17 (a) An order certifying the proposed Class and Sub-Classes,
18 designating Plaintiffs as named representatives of the Class, and
19 designating the undersigned as Class Counsel;
- 20 (b) A declaration that Defendants are financially responsible for
21 notifying all Class Members about the defective nature of the
22 Headlight, including the need for periodic maintenance;
- 23 (c) An order enjoining Defendants from further deceptive
24 distribution, sales, and lease practices with respect to Class
25 Vehicles; compelling Defendants to issue a voluntary recall for
26 the Class Vehicles pursuant to 49 U.S.C. § 30118(a); compelling
27 Defendants to repair and eliminate the Headlight Defect from
28 every Class Vehicle; enjoining Defendants from selling the

1 Class Vehicles with the misleading information; and/or
2 compelling Defendants to reform its warranty, in a manner
3 deemed to be appropriate by the Court, to cover the injury
4 alleged and to notify all Class Members that such warranty has
5 been reformed;

6 (d) An award to Plaintiffs and the Class for compensatory,
7 exemplary, and statutory damages, including interest, in an
8 amount to be proven at trial;

9 (e) Any and all remedies provided pursuant to the Magnuson-Moss
10 Warranty Act;

11 (f) A declaration that Defendants must disgorge, for the benefit of
12 the Class, all or part of the ill-gotten profits it received from the
13 sale or lease of the Class Vehicles or make full restitution to
14 Plaintiffs and Class Members;

15 (g) An award of attorneys' fees and costs, as allowed by law;

16 (h) An award of pre-judgment and post-judgment interest, as
17 provided by law;

18 (i) Leave to amend the Complaint to conform to the evidence
19 produced at trial; and

20 (j) Such other relief as may be appropriate under the circumstances.

21 **DEMAND FOR JURY TRIAL**

22 510. Pursuant to Federal Rule of Civil Procedure 38(b) and Central
23 District of California Local Rule 38-1, Plaintiffs hereby demand a trial by jury of
24 all issues in this action so triable.
25
26
27
28

1 Dated: May 3, 2023

Respectfully submitted,

2 **Capstone Law APC**

3
4 By: /s/ Laura E. Goolsby

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